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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ET AL., APPELLANTS,

vs.

STATE OF NEW HAMPSHIRE

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

FILED OCTOBER 14, 1940.

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[fol. 1]

IN SUPERIOR COURT OF HILLSBOROUGH COUNTY, STATE OF NEW HAMPSHIRE

SEPTEMBER TERM, 1939

STATE

VS.

WILLIS H. COX, et als.

Respondents' Bill of Exceptions

The respondents present unto the Court the following Bill of Exceptions.

STATEMENT OF CASE

This is a prosecution of appeals from the Municipal Court of Manchester for alleged violation of Chapter 145, Sections 2 to 5, of the Public Laws of the State of New Hampshire. The respondents pleaded Not Guilty. Trial by a jury on November 20, 1939 and verdict of Guilty returned on November 22, 1939.

The respondents seasonably objected and excepted to the failure and refusal of the Court to dismiss and quash the complaints before trial, generally and on grounds more specifically set forth in the record; to the admission and exclusion of evidence, as shown by the record; to the denial by the Court of respondents' motion to dismiss and quash the complaint at the close of the State's case, on the ground that as construed and applied to respondents the statute denied them their right of freedom of public assembly on the streets, freedom to worship Almighty God according to the dictates of their conscience, and freedom of press and speech, in violation of the Constitution of the State of New Hampshire and the United States Constitution, Fourteenth Amendment, Section 1, and also that complaint failed to state any violation of law; to the refusal and overruling by the Court of several written offers of proof as is more fully disclosed from the record; to the failure and refusal of the Court to dismiss and quash the complaint at the conclusion of all of the evidence, on the ground that the statute as construed and applied to respondents unreasonably denied

them their right of public assembly on the streets, freedom of speech and press and the right to worship Almighty God according to the dictates of their conscience; to portions of the arguments of the County Solicitor; Sections 2 to 5 of Chapter 145 of the Public Laws of the State of New [fol. 2] Hampshire 1926 are void on their face because they vest in the licensing committee arbitrary and discriminatory powers and fail to lay down the conditions upon which a permit may be granted or refused; to the refusal of the Court to grant the renewed motion of the respondents after the jury had been drawn and before evidence was introduced on the grounds that the statute was unconstitutional as more specifically set forth in the record; to the action and ruling of the Court in limiting the consideration by the jury of the signs and placards to only the question of any bearing they may have on whether or not this was a parade or procession; to the action of the Court in refusing the respondents and respondents' witnesses to explain why they carried the signs "Religion is a Snare and a Racket" and "Serve God and Christ the King", and why they believe that religion is a snare and a racket, and to explain how this work was an act of worship.

This Bill of Exceptions, the complaint against one of the five respondents, the evidence so far as material, the ruling of the Court on admission and exclusion of evidence, offers of proof, motions and colloquies of Court and counsel, and argument of County Solicitor to which exception was taken are to be printed as an appendix. The exhibits may be referred to in brief and oral argument but need not be printed and can be sent up to the Supreme Court in original form.

And now that justice may be done the respondents respectfully request that this, their Bill of Exceptions, be allowed and the same transferred to the Supreme Court for judicial determination of the question of law raised herein.

Willis H. Cox et al., by Barnard & Barnard, Charles D. Barnard, Charles H. Barnard, Hayden C. Covington, Attorneys for Respondents.

ORDER ALLOWING BILL OF EXCEPTIONS

The foregoing bill of exceptions is hereby allowed, and all questions of law thereby raised, as well as any other questions raised by exceptions taken during the trial as shown by the record, are reserved and transferred. A transcript

of the testimony and proceedings had during the trial, together with a copy of one complaint against one of the five respondents, to be printed as an appendix hereto. All [fol. 3] exhibits offered during the trial may be used in the Supreme Court, but need not be printed unless that court so directs.

Oscar L. Young, Presiding Justice.

Appendix to Bill of Exceptions

Discussion in Chambers:

Mr. Barnard: In the trial of these particular cases, we want to put in all the evidence as to the parade, as to whatever it may be.

The Court: Do you mean you are going to put in evidence that does not apply to the cases we are trying?

Mr. Barnard: No.

Mr. Barnard, Jr.: It is your idea they are more or less symbolic of the whole group?

Mr. Broderick: The understanding is if these respondents are found guilty, they are all guilty; if they are acquitted, they are all acquitted.

The Court: Do you agree to that?

Mr. Barnard: Surely, but we want to put in this evidence.

The Court: Will they come in and plead guilty?

Mr. Barnard: They won't all be here.

The Court: I understand if your attorney pleads he is liable for the fine.

Mr. Barnard: Yes.

The Court: Your motion to dismiss prior to the hearing is denied.

Mr. Barnard: Do I understand the motion now before the Court is denied?

The Court: Sure.

Mr. Barnard: We will save our exception, if Your Honor please.

In the Courtroom, Following Plea of "Not Guilty" by Respondents:

Mr. Barnard: We would like to renew our motion as to unconstitutionality, which was filed before the case was opened, ask for a dismissal on the grounds therein stated.

The Court: Do you refer to the same motion you filed in writing?

Mr. Barnard: Yes, Your Honor.

[fol. 4] The Court: Your motion to renew is overruled.

Mr. Barnard: Exception. There is one more question. Should the jury be instructed that these five men are being tried as five of sixty-eight respondents who have been arrested for the same offense?

The Court: Any objection?

Mr. Broderick: No, sir.

The Court: Do you want me to state it, or do you want the Solicitor to state it in his opening?

Mr. Barnard: It makes no difference so long as the jury understands that is the true fact.

The Court: I can say to the jury this was a public highway and these five are of a group of sixty-eight.

Mr. Broderick: Plus the fact Mr. Kenney, the highway surveyor has the right to issue licenses.

The Court: It is agreed there was no license in any case?

Mr. Barnard: Yes.

The Court: Shall I state that, too?

Mr. Broderick: Mr. Kenney will go on the stand.

Mr. Barnard: If he goes on the stand we will want the right to cross-examine.

Mr. Broderick: Why don't we let it go at that. We will decide first, it is a public highway; second, Mr. Kenney had authority to issue licenses, and third, that these are five out of a group of sixty-eight.

The Court: All right.

Mr. Barnard: I think it should appear under what section of law Mr. Kenney derives his authority.

The Court: I don't believe you can go into his right to issue licenses.

Mr. Barnard: What is his title?

Mr. Broderick: Highway commissioner.

The Court: Any city can create a licensing board; he is appointed by the city government?

Mr. Broderick: Yes.

Mr. Barnard: That is agreed to, that he is highway commissioner and derives his authority under that statute.

The Court: He has been appointed by the city?

[fol. 5] Mr. Broderick: Yes.

The Court: The city has delegated the granting of licenses to him?

Mr. Broderick: Yes.

Mr. Barnard: So that we may understand about the motion—the motion submitted to you in chambers was denied and we save our exception?

The Court: Right.

Mr. Barnard: We renew that motion, and that is denied and we save our exception?

The Court: That is right.

The Court: Mr. Foreman and gentlemen, it has been agreed between counsel that Hanover Street is a public highway in this city, so it will not be necessary for that to be proved. There will be no need to produce evidence on that fact. It is admitted. It is also agreed and admitted Francis Kenney is the individual to whom the city has delegated power of issuing licenses under the statute which I referred to for parades and processions, and that he is the individual who has authority with respect to licenses and permits in such matters. I also wish to state to you these respondents now being tried are five out of a group of sixty-eight, who were originally arraigned under the complaint they were participants in a parade.

LIEUT. THOMAS E. MANNING, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your full name, please?
A. Thomas E. Manning.
Q. Your occupation?
A. Police officer.
Q. In what capacity?
A. Lieutenant.
Q. Whether or not on July 8th, on the evening of July 8th you were employed as a police officer or lieutenant?
A. I was.
Q. Where were you working that night?
A. I was in charge of police headquarters.
Q. Whether or not on the evening of July 8th last Mr. Cox called at the station?
A. He did.
Q. For what purpose?

A. He was accompanied by a Mr. Lieby. They came to the station at just 5:45, and in the presence of Inspector Reardon, Mr. Cox informed me they were going to have a parade. I inquired who "we" was. He said, the Jehovah Witnesses. I inquired if he had a license to permit the parade. He said he didn't have a license. I told him it was [fol. 6] against the law to parade without a license. He said, we are going to have a parade. Suddenly Mr. Lieby said, we are going to have it anyway, and he run out of police headquarters.

Q. When was that?

A. Saturday night, July 8th, 1939.

Q. Whether or not the stores in Manchester are open on Saturday nights?

A. They are.

Q. What is the condition of traffic on Hanover, Elm and Concord Streets on Saturday nights?

A. Very heavy.

Q. Are you able to identify Mr. Cox?

A. I am.

Q. Will you do it please?

A. The gentleman talking with Attorney Barnard.

Q. This gentleman here?

A. Yes, sir.

Q. Did they at that time inform you what sort of parade they intended to have?

A. Just as Jehovah Witnesses.

Q. How long did they stay at the station that night?

A. I should say approximately three minutes.

Q. After you informed them it was necessary to have a license, that they could not parade without a license, whether or not you know of your own knowledge whether or not a parade took place that night?

A. Yes.

Q. Were you at the station when anybody was booked with reference to this complaint?

A. Yes.

Q. How many were booked?

A. Twenty-nine male persons were booked.

Q. Whether or not they had any signs or placards?

A. Plenty of them.

Q. Did you retain those signs and placards?

A. Yes.

Q. Would you be able to identify the signs or placards?
A. I think so.

Mr. Broderick: May I have them, please.

Q. Did you talk with Mr. Cox after he was apprehended and arrested?
A. At the booking desk.
Q. I show you some signs, Lieutenant, and ask if you can identify these signs. One side reads—what does it read?
A. Serve God and Christ the king.
Q. And on the reverse side?
A. Religion is a snare and a racket.
Q. I ask if you can identify these cards?
A. Yes.
Q. Reading, Fascism or Freedom, hear Judge Rutherford, face the facts, at I. O. O. F. Hall, Sunday, July 9th, at 7 to 8 P. M. Free admission, no collection?
A. Yes.
Q. I show you a packet of papers and ask if you can identify these?
A. I could if I could see some of the reading of them.
Q. Are you able to identify these?
A. Yes.
Q. Did you obtain possession of these, Lieutenant?
A. No, I didn't.
Q. You didn't?
A. No.

Mr. Broderick: I offer, Your Honor please, the sign reading "Religion is a snare and a racket" on one side and [fol. 7] "Serve God and Christ the king" on the other, together with the cards advertising a meeting to be held in the I. O. O. F. Hall, 83 Hanover Street, July 9th, at 7 to 8 P. M., as State's Exhibits #1 and #2.

Mr. Barnard: We wish to know at this time whether or not those signs and placards are admitted for all purposes?

Mr. Broderick: They are to be admitted because of the position Mr. Barnard took and the exception made in Chambers when I inquired if he had any objection to the introduction of the pictures showing the respondents marching. In the pictures these placards are there. The picture itself shows the signs. I want to identify the signs.

Mr. Barnard: The question we now raise—we don't object to the admission of the signs, but we would like to have

the Solicitor state the printed matter on the signs as well as the signs themselves to the Court. We would like to know if he agrees to the printed content of the signs.

The Court: They are before the jury just as they are. Of course the carrying of signs and placards is some evidence of a parade or similar performance of some character.

Mr. Barnard: If the signs are in for all purposes, we propose to explain the signs to the jury and I think we have a right to do that.

The Court: The only thing in question here is whether or not they paraded without a license. Now, the fact they were carrying signs and wearing placards in somewhat of an orderly arrangement as they marched may be evidence of a parade.

Mr. Barnard: Not so far as we are concerned.

The Court: What is the sense of going into an explanation of the signs?

Mr. Barnard: Based on the ground they believe they were within their rights, based on the constitution of the State of New Hampshire, as well as that of the United States, they were not obliged to have a permit and even though a permit had been denied them, they still had a right to be there.

The Court: I understand that but I still don't see why you have to go into an explanation of what the signs mean or stand for. Do you want to show the signs were a part of the regulations?

Mr. Barnard: Part of the dissemination of information.

The Court: That is all right. Do the signs need marking? Don't they sufficiently identify themselves?

Mr. Broderick: I think so.

The Court: It is understood they are in the case and the jury will have them when they come to consider the case.

Mr. Barnard: Yes.

Mr. Broderick: You may inquire.

[fol. 8] Cross-examination.

By Mr. Barnard, Sr.:

Q. Lieutenant, what time did you come on duty the night of July 8, 1939?

A. 3:45 P. M.

Q. You were there from 3:45 until when?

A. 11:45 P. M.

Q. Whether or not you were out on the street, on the streets of the City of Manchester that night after you came on duty?

A. I was not.

Q. Therefore your statement in regard to traffic is not from your own knowledge? Is that correct? You said the traffic was generally heavy?

A. As a rule, yes, on Saturday night.

Q. But that is not of your own knowledge?

A. On Chestnut St. yes.

Q. You testified as to the condition of traffic on Chestnut Street on July 8, 1939, between the hours of 5:30 and 6:30?

A. Is it heavy—is that what you want?

Q. I want to know what your opinion is.

A. I should say it was heavy traffic.

Q. Whether or not that is pedestrian traffic or automobile traffic?

A. Both.

Q. That is what you saw from the station?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When did you say that they came to the station?

A. 5:45 P. M.

Q. When—did you do the booking that night?

A. I did.

Q. When was the first booking you made, at what time?

A. 9:15 P. M.

Q. At 9:15?

A. Yes, sir.

Q. Have you that record with you?

A. What time I booked?

Q. Yes.

A. No, I haven't.

Q. Do your records at the station show what time they were booked?

A. Yes, sir.

Q. Will you p. duce that record in Court?

A. Do you want me to go and get it?

Q. Not just this minute, but will you produce it?

A. Yes.

Q. Now, you say at 9:15 they were booked?

A. P. M. Yes.

Q. When if you know did the first group enter the station?

A. 6:15 P. M.

The Court: Do you mean that is when they came in to see about a license?

Witness: No, Your Honor; Mr. Cox and Mr. Lieby came in at 5:45; at 6:15 the first group came in with an officer.

Q. You say it was 6:15 when the first group came in?

A. Yes, sir.

Q. Who came in with that group?

A. Police Inspector Reardon and Officer Moran.

Q. Were they immediately booked at that time?

A. They were not.

Q. What did you do with them in the meantime—how many came in?

A. Twenty-five persons.

Q. What happened to those persons, if you know, after they came in the station?

A. Saturday night at police headquarters is a pretty busy night. I was busy at that time and turned these people over to Inspectors Sullivan and Kelly.

Q. Did you see them afterwards until they were booked?

A. No, I did not.

Q. Do you know where they went after you saw them [fol. 9] coming into the station?

A. They went up to the inspectors department, upstairs in the police headquarters.

Q. Whether or not you had any talk with any of those that came in there at that time?

A. Yes, I did.

Q. Whether or not inspector—did you testify in Municipal Court?

A. I did.

Q. On the 10th day of July?

A. I did.

Q. Whether or not you remember testifying that they came into the station at 6:50?

A. No. 6:15.

Q. 6:15?

A. Yes.

Q. You feel positive of that, do you?

A. Absolutely.

Q. Were any notes made in your department at the time they came in?

A. Yes. I made a note.

Q. Would those notes indicate the time that this first group, which you say was twenty-five, came in?

A. Yes, sir.

Q. Will you produce that for us this afternoon?

A. I believe so; it is right there.

Q. Is this the only record that is made of those alleged to be arrested when they came in—there is no keeping of the time they came in?

A. That is my report, my personal report.

Q. This is your report to the Chief?

A. Yes.

Q. But there is no record at the police station as to the hour and minute these different respondents came in?

A. If I remember correctly the second group was brought in at 7:20 by Sergeant Austin. If I remember correctly.

Q. You say the first group was at 6:15?

A. Yes, sir.

Q. Whether or not you have any way of telling, by any record you have at the police department, as to whether or not the time shows when that first group actually came in, except as you say it was 6:15? Is there any record of it in the police station?

A. I believe I put it in my note to the Chief.

Q. You believe you put it in your note to the Chief?

A. Yes, I have got it in my diary.

Q. Is this a copy of your diary?

A. I don't think it would be word for word.

Q. I would like to show you this and ask you to see if there is any time there that the first group came in?

A. I will admit making a mistake. It is 6:50 there. It should have been 6:15 instead of 6:50.

Q. It should have been 6:15?

A. Yes.

Q. In there it was a mistake and it should have been 6:15?

A. Yes, sir; that is right.

Q. Whether or not, Lieutenant, did you ever report to the Chief of the police department that you had made a mistake and therefore that was 6:15 instead of 6:50?

A. No, I didn't. I ain't seen that note from that night until this present day.

Q. Why do you say it was 6:15 instead of 6:50?

[fol. 10] A. At 5:45 Mr. Cox and Mr. Lieby came to the station. At that time Inspector Reardon was in the police station. After they left the station, Inspector Reardon went over to Joe's Lunch between Chestnut and Hanover Streets, and then to Hanover Street where he met Officer Moran, and I am positive they were brought in at 6:15.

Q. 6:15?

A. 6:15.

Q. You came on at 3:45 was it?

A. Yes.

Q. And worked until what time?

A. 11:45 P. M.

Q. There were other groups who came in there while you were present?

A. Yes, sir.

Q. You saying the second group came in at 7:20?

A. If I recollect correctly.

Q. Who, if anyone, escorted them to the station?

A. Sergeant Austin.

Q. Anyone else?

A. That is all, Sergeant Austin.

Q. Sergeant Austin was on duty that night?

A. Yes, sir.

Q. Was he walking?

A. Yes, sir.

Q. He was walking that night, and from your own knowledge do you know where the group came from?

A. That Sergeant Austin brought in?

Q. Yes.

A. Elm Street, just south of Lowell.

Q. How many were in that group?

A. Twenty-five persons.

Q. Did you book that group at that time?

A. No, sir.

Q. Why didn't you?

A. I turned them over to the police inspectors. I was busy at that time. Saturday night at police headquarters is a busy night.

Q. Were you present when the next group came in?

A. I was.

Q. What time was that?

A. Approximately I should say some time around 7:40.

Q. Who accompanied that group to the station?

A. Officer Hould.
Q. How many were there in that group?
A. I should say there was thirty some odd.
Q. And do you know where that group was picked up?
A. On Elm St.
Q. Do you know where on Elm Street?
A. In the vicinity of Merrimack common.
Q. Were there any other groups that came in that night?
A. Yes. There were two, three or four individuals brought in by Officers Tierney and Ahern.
Q. Do you remember what time Tierney brought any in?
A. It was shortly after Officer Hould brought his in.
Q. You say that was about 7:40?
A. It was close to the same time. They all come in together.
Q. How many did Officer Tierney bring in?
A. As I remember he and Officer Ahern brought in three or four.
Q. Who?
A. Officer Ahern.
Q. Did they come in together?
A. Followed each other; yes.
Q. Whether or not there was any other group brought in?
A. Yes, there was.
Q. What time were they brought in?
[fol. 11] A. About the same time. No. I will take that back. Shortly after Officer Hould brought in his prisoners.
Q. I understood that Officer Tierney and Officer Ahern brought in three or four after Officer Hould?
A. Yes.
Q. When did they come in?
A. About ten or fifteen minutes after Officers Tierney and Ahern came in.
Q. Who accompanied that group?
A. Officer Hickey.
Q. Do you know where they were apprehended?
A. On Elm Street.
Q. Whereabouts on Elm Street?
A. In the vicinity of West Merrimack Street, I think.
Q. How many were in that group?
A. I can't just recall; ten, twelve or fourteen anyway.
Q. Have you any record, or is there any record in the station just how many were in that group?
A. No.

Q. Did you book them at that time?

A. No, I didn't.

Q. You turned this group over to Inspector Sullivan and Inspector Kelly, is that right?

A. Yes.

Q. Whether or not any other group was brought in that night?

A. I believe one more gentleman was sent in in the police wagon by Inspector Pouliard from the City Hall.

Q. Was he on duty that night?

A. Yes.

Q. Wasn't he on his vacation?

A. No, sir.

Q. Was he in police uniform?

A. No, he was not.

Q. He was in citizens dress?

A. Yes.

Q. Was he in his shirt sleeves?

A. The police inspector?

Q. Yes.

A. No, sir.

Q. Do you know whether or not he had his credentials as a police officer with him at the time he made the arrest?

A. That I couldn't say.

Q. He sent in one person?

A. One person.

Q. Now, did you book that one person?

A. No, I didn't.

Q. Do you know what that one person's name was?

A. Offhand I can't just recall.

Q. Do you have any record at your office so as to know who that one person was who was sent in the wagon—you say that was from the City Hall?

A. Yes.

Q. Whether or not you know whether the wagon was telephoned for that night?

A. A wagon call came in on the police system.

Q. You didn't know anything about that until after they had come back. Is that right?

A. About what?

Q. Did you know about the wagon going out and where it was going until they reported back to you?

A. No.

Q. Now, when they brought in that one person you say he was not booked by you?

A. No; not at that time.

Q. Do you know who that person was? Would you know him if you saw him?

A. No, I wouldn't.

Q. So that you have no record at the police station of a man arrested by one of your officers and brought to the [fol. 12] station in the police ambulance or police wagon—you have no record of that name, of who that man would be?

A. I don't know if that is on that note or not. I couldn't say as to that. No, it is not there.

Q. It is not there. Now, Lieutenant, at any time during the time you were present at the police station were these defendants booked?

A. Please repeat that.

Q. At any time you were at the station and on duty were these defendants booked?

A. Booked?

Q. Yes.

A. Yes.

Q. Whether or not you did that booking?

A. I did.

Q. These different groups, who were they composed of?

A. Men, women and children.

Q. Did you book the children?

A. No, sir.

Q. Did you book the women?

A. No, sir.

Q. Who did you book?

A. Twenty-nine male persons.

Q. Is that all you booked that night, twenty-nine male persons?

A. In that group.

Q. In any group that was brought in?

A. Do you mean of the Jehovah Witnesses?

Q. Yes.

A. Twenty-nine.

Q. You only booked twenty-nine male persons of the Jehovah Witnesses who were brought to the station that night?

A. Yes.

Q. How many, if you know from any record, how many persons were brought in the station that night?

A. As I recall eighty-eight.

Q. Lieutenant, you were present in the Municipal Court on the morning of July 10th when these respondents were in court, were you not?

A. Yes, sir.

Q. Therefore if you booked only twenty-nine that night, what if anything is the explanation that you had sixty-nine in court the Monday morning following the time they were arrested?

A. The women were allowed to go on their own recognizance, to be back in police court on Monday morning.

Q. That is twenty-nine were let out on bail that night or the next morning. Is that right?

A. I think some of them didn't get bail and stayed there until Monday morning. That is as I remember.

Q. Were you present—you say you got through work at 11 o'clock?

A. 11:45.

Q. Were you there any after 11:45 on that Saturday night?

A. No, sir; I left there at just 11:45 as I recall it.

Q. Now, Lieutenant, I understood you to say you let some of the people who had been arrested by officers go on their own personal recognizance?

A. Yes. Myself? No.

Q. How did they get out of the station when they had been arrested by your officers on the street—who let them out?

A. I didn't leave them go on their own recognizance; the police inspectors let them go.

Q. Did you know they had gone on their own recog-
[fol. 13] nizance?

A. Inspector Sullivan informed me of the fact they were gone and would be back Monday morning for Court.

Q. Whether or not you made a record of those who went out on their personal recognizance?

A. I myself? No.

Q. Whether or not you made a record of anyone who went out on their own recognizance?

A. No, sir.

Q. You have stated twenty-nine. Will you please tell us how many women were in that group of twenty-nine?

A. There were none.

Q. None?

A. No.

Q. Whether or not the women were booked that night?

A. Booked?

Q. Yes, booked?

A. No, sir.

Q. Whether or not—you were in charge of the station that night. Is that correct?

A. Yes.

Q. You say you let none go on their own recognizance?

A. No.

Q. I understood you to say the last group came in at what time?

A. About 7:55.

Q. About 7:55?

A. In that vicinity.

Q. Therefore, whether or not this is a fact: that from 7:55 until the time that you were relieved of duty and went home at 11:30 or 11:45 all the Witnesses who had come in, who had been arrested, were left there from 7:55 and you went home before any of them were liberated?

A. No, some of them were let go.

Q. Who let them go?

A. Police Inspector Kelly.

Q. Weren't you in charge that night?

A. Yes, but they informed me they let them go.

Q. Have you any record of those that were let go?

A. I myself, no.

Q. Inspectors Sullivan and Kelly did not report to you either in writing or verbally the names of the persons they were letting go?

A. That is right.

Q. What did you do about the persons you say were booked—what time were they booked?

A. What time were they booked?

Q. Yes.

A. At 9:15 P. M.

Q. Have you a record at the station of the names of those?

A. Yes.

Q. Have you it here in Court?

A. Yes, there is a record there.

Mr. Barnard: Will you produce it, please?

Mr. Broderick: We have asked for it; it is on the way.

Q. Now, Lieutenant, from your own knowledge do you know, or from any record you have in your possession or at the police department that is under your jurisdiction, whether any of those respondents were let go on bail prior to the time you left the station?

A. No, sir.

Q. I beg your pardon?

A. No.

Q. Was any request made of you for them to get bail?

A. Not to me, no.

Q. Was there any information that was imparted to you in your official capacity of having charge of the station that [fol. 14] night of any of the persons who had been arrested that they wished to get bail prior to the time that you left?

A. Just one.

Q. Just one. Who was that one, if you remember?

A. Mr. Cox.

Q. Just what did Mr. Cox say to you at that time?

A. He asked to be let go and said he would be back to court on Monday morning.

Q. What was your reply?

A. I told him what was good for the goose was good for the gander in this respect.

Q. You didn't give him an opportunity to get bail?

A. That is all he said to me; that is all he asked me for.

Q. You didn't suggest how he could get bail?

A. No, I didn't.

Q. Still he asked you to let him go, did he not?

A. Yes, sir.

Q. Now, Lieutenant, you have before you—what is that paper you have before you?

A. It is known as the police blotter.

Q. The police blotter. Now, on that police blotter you have how many names?

A. Twenty-nine.

Q. Who made that record, if you know?

A. This here?

Q. Yes.

A. I did.

Q. When was that record made, would you say?

A. When?

Q. Yes, the date and hour when it was made?

A. July 8th, 1939, at 9:15 P. M.

Q. Whether or they were all the Witnesses that were booked that night on the police blotter?

A. That is all.

Q. Still the next morning there were in court sixty-nine?

A. No, not the next morning—the morning following.

Q. I mean the morning following that. Sixty-nine. What happened to the rest of them that you say came to the station in these different groups, which added together would come close to a hundred—what was done with the others?

A. They were let go on their own recognizance to be back in court on Monday morning.

Q. By whom?

A. By police inspectors Sullivan and Kelly.

Q. Whether or not Inspectors Kelly and Sullivan reported to you in writing the names of those who they let go on their own recognizance?

A. No, they did not.

Q. You were in charge of the station?

A. I was.

Q. It was essential to know who these people were?

A. Right.

Q. Still you say they did not report the names of the people who they let go. Is that right?

A. No, they didn't.

Q. Now, Lieutenant, I understood you to say about 5:45 a person by the name of Mr. Cox and a Mr. Lieby came to you and made a request, or as you say stated they were going to have a parade. Whether or not they didn't say to you they were having an information march?

A. No, sir.

Q. You feel confident of that, do you?

A. Yes, sir.

[fol. 15] Q. Did they tell you where they were going to march?

A. They said they were going to march from the Odd Fellows Hall on Hanover Street.

Q. Did they tell you where to?

A. No, they did not.

Q. Did they ask any request of you at all?

A. No.

Q. If you know, what was the reason for them coming and seeing you?

A. That I don't know.

Q. You, as inspector in charge of the station that night, had no authority to issue permits?

A. No, sir.

Q. Therefore, Lieutenant, they came to inform you they were going to have an information march, did they not?

A. They did not.

Q. Nothing was said about an information march in your presence?

A. No, sir.

Q. Your officers and you in charge were patrolling the streets of Manchester—you and the officers under your charge were in control of the streets that night?

A. Yes.

Q. Now, you being in charge, if you know where did you get the information these people should be arrested? Did you issue an order they should be arrested?

A. Yes, when they didn't have a permit to parade, or a license.

Q. Did you tell Officers Reardon and Moran, who were in the station at the time that Cox and Lieby came in there—did you tell them?

A. No, Moran was not in the station.

Q. Who was in the station when they came in, outside of Inspector Reardon?

A. Just Inspector Reardon and myself.

Q. Did you tell him to arrest these people, you being in charge of the station?

A. No.

Q. Where did he get his instructions, if he got any, to arrest them?

A. He was at the corner of Hanover and Chestnut Streets with Moran. This group was coming east on Hanover Street. Officer Moran stopped them and asked if they had a license or permit to parade? He said he didn't have a license or permit to parade.

Q. So you gave Officer Reardon further instructions. Is that right?

A. No, sir.

Q. Whether or not—did you give any instructions by teletype or any other way to your officers to pick up this information marchers?

A. No, sir.

Q. So that the first information you had of that was when they brought in the first group, which was through Inspector Reardon?

A. And Officer Moran.

Q. And Officer Moran. That was the first information you had of it?

A. In regard to the parade?

Q. Yes.

A. Yes.

Q. You say parade—why not information march? When they came to the station were those banners on them, were they carrying them or were the police carrying them?

A. They were carrying banners and had the placards on [fol. 16] front and back.

Q. You would call that information, would you not?

A. Yes.

Mr. Broderick: I submit that is a question for the jury to decide, whether the signs were information.

The Court: I don't know just what Mr. Barnard is referring to. What are you referring to as information?

Mr. Barnard: The information on the signs.

Mr. Broderick: Which particular sign?

Mr. Barnard: Any sign they had there.

Mr. Broderick: For instance, religion is a snare and a racket?

Mr. Barnard: Yes, and all the rest of it.

Q. It was an information march?

A. I don't know; I wouldn't say.

Q. You saw the cards and placards being carried by each one that came in accompanied by the officers?

A. Yes.

Q. Now, Lieutenant, whether or not do you know of your own knowledge if any of your officers allowed them to parade the streets of Manchester on that evening of July 8th, without being molested?

A. No, sir, not that I can recall.

Q. If you have no record—you have no record there that any of these marchers were on the streets and parading without being molested by the police?

A. Not to my knowledge.

Q. Whether or not the information you have as to where the different groups were picked up was information

given you by the officers who accompanied them to the station? Is that right?

A. Yes, sir.

Mr. Barnard: I think that is all.

Redirect examination.

By Mr. Broderick:

Q. Is it necessary for you as lieutenant to instruct your officers every time there is a law violated before they actually make an arrest?

A. No.

Mr. Broderick: That is all.

Inspector Walter Suosso, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your full name?

A. Walter Suosso.

Q. You are an inspector on the Manchester police force?

A. I am.

Q. Whether or not you were on duty July 8th last?

A. Yes, sir.

Q. Were you on duty in the evening of that day?

A. I was.

Q. Were you at headquarters when these respondents were brought in?

A. Not all of them.

Q. Did you talk with any of them?

A. Yes, sir.

Q. How many of them did you talk with?

A. All of them.

Q. You were not present when all of them came in. Did you talk with all of them subsequently?

A. Yes.

[fol. 17] Q. Have you a record of each and every person who participated in this parade?

A. Yes, sir.

Q. Did you talk with each one of those persons?

A. Yes.

Q. Are you able to submit a record of every person who participated in that parade?

A. Yes, sir.

Q. Will you tell His Honor and the jury the nature of your conversation.

A. We asked what their names were; we asked their ages. Asked where their residence was. We asked whether or not they were parading. We asked whether or not they handed out any handbills. We asked whether or not they carried any placards.

Q. Yes. And how long did you talk with them, inspector, before they were booked, would you say, approximately?

A. Approximately an hour and a half.

Q. All that period of time was consumed because of the number of people?

A. Yes.

Q. And because of the records?

A. Yes.

Q. I show you a paper and ask if you can identify that paper?

A. Yes, sir.

Q. What is that?

A. That is a report of the conversation with these people that night, including names and addresses, their ages and whether or not they were parading.

Q. That was made in the presence of whom?

A. Inspectors Kelly, Sullivan and myself.

Q. That notation was made at the time of the conferences?

A. Yes, sir.

Q. How many names are on that list?

A. Eighty-eight.

Q. Including men, women and children?

A. Yes, sir.

Q. In fact everyone who participated in the parade name is there, with their age, address, and other information?

A. Yes, sir.

Q. Whether or not any one of the respondents now on trial informed you whether or not they had a permit to parade?

A. I didn't take that up with them.

Q. Whether or not the respondents admitted to you they did in fact parade?

A. They did admit they paraded.

Q. Other than conferring with them and obtaining their names and addresses and other information on that paper, did you obtain cards and other evidence?

A. Yes, sir.

Q. What were those cards and the other evidence?

A. These banners, cards tacked onto those sticks, the other cards without sticks attached to them and those handbills done up in bundles. The banners—when we started to book these people I started putting their names on the banner of the persons who had the banner. I wrote names on some of them. Inspector Provost wrote on some others. Some have no names on them. That is accounted for by the fact they were left in the station by some of the paraders and we were not able to tell who had them, so no names [fol. 18] appear on some of them.

Q. I show you these banners, inspector, and asked whether or not the majority of them have individual's names on them?

A. They have.

Q. Did you write the names in the presence of the individuals you took the banners from?

A. Yes, sir.

Q. They gave you the names, did they?

A. Yes, sir; Inspector Provost wrote most of them.

Q. During your conversations with them, Inspector, whether or not any one of these individuals denied they participated in this parade?

A. No, sir, they did not.

Q. Whether or not they admitted it to you?

A. They did.

Q. Do you know of your own knowledge, for instance, whether or not Mr. Cox carrier a banner?

A. He said he did. I didn't check the banners to see whether his name is on one of them. Those handbills were carried by different people that were brought into the station that night, and the bunches that appear in bundles, the name of the person having them was written on one of those bills.

Q. From your conversations, whether or not all these people who participated in the parade were residents of Manchester?

A. No, sir; forty-nine of them were resident from out of the city.

Q. Did you inquire whether or not they were Witnesses?

A. Some of them were Witnesses and some were not.

Q. You didn't actually make any of the arrests in these cases?

A. No, sir.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. Inspector, you referred to a list you have there, matters of record. Is that the original record?

A. Yes, sir.

Q. Now, Inspector, when you made that record did you have a typewriter with you?

A. There was one in the police station.

Q. Therefore was that record made by your dictation?

A. I made the record.

Q. Yes, but is that the original record, or have you a record that was made in your own handwriting?

A. No, we have not.

Q. Then when that record was made you had a stenographer with you?

A. No, sir.

Q. How—did you make the record yourself on the typewriter?

A. Yes, sir.

Q. So as these different persons you have listed there came before you, you made that report on that paper with a typewriter. Is that correct?

A. No. The information was written out on ordinary pads of paper and typed on this in our official report to the Chief.

Q. That is what I am asking you. Is that the original record which you say was made up? Who wrote up the original report?

[fol. 19] A. I typed the original report.

Q. What was it typed from?

A. From the information we got from these people.

Q. That information was written by you or somebody else primarily, and copied by you?

A. That is right.

Q. Where is that original record?

A. We didn't keep those.

Q. Do you mean you destroyed them?

A. Yes.

Q. Inspector, you keep a diary do you not?

A. Yes, sir.

Q. Doesn't your diary cover your full work?

A. Yes, sir.

Q. Does your diary show the original records of these arrests?

A. The diary shows an account of our work in that questioning.

Q. Yes. Now, you made that report from your diary?

A. I made this report from the notes we took on this regular tab paper.

Q. Now you say you have destroyed those notes?

A. Yes, sir.

Q. Why?

A. Well, they were not written so that they were legible. They were scribbled and scratched in a short-cut route. Well, they wouldn't be presentable to read.

Q. Assuming that is true, how do you know that is a true record?

A. It was taken from them.

Q. But you say you destroyed the original records?

A. That is right.

Q. Is that right?

A. That is right.

Q. So that when original records are made in the station it is the common practise for an officer in charge, you being a subordinate, to destroy your original records. Is that a fact?

A. I would like to explain that, if I may.

Q. Sure.

A. In a case of this kind, we had eighty-eight people to be questioned. Now, it is no more than fair to these people that we finish the questioning as quickly as possible. We couldn't take the time to question all of them and write out a record that would be presentable to our superior, so we went through the questioning as soon as possible, scribbling on paper the information we received from them, from the people we were questioning, then after the people were questioned they were booked and a little later on the original record was submitted to our superior for his informa-

tion and it is here and it is in form so that he can read it or anybody else could read it, but I doubt if he could read our original notes, which were scribbled in such a hurry because of the number of people to be questioned.

Q. Inspector, does it make any difference to you as an officer whether you arrest five persons, one person or one hundred persons?

A. In some cases it does.

Q. These people were all arrested?

A. Yes.

Q. They were all confined, as the lieutenant stated, from 7:55 until some time when they were liberated?

[fol. 20] A. I would like to ask about the word "confined". Do you mean confined to a cell?

Q. No, confined to the station?

A. They were detained.

Q. They couldn't get away, could they?

A. I don't know if some of them went out or not, it was possible.

Q. You know that none of them got away?

A. There were eighty-eight people there. None of them were locked up until the twenty-nine men were locked in cells. The women and children, some of them were pretty young, were roaming around the station. I think we did the best we could with them.

Q. Don't you think these Witnesses should have the privilege of knowing what you put down on the pieces of paper, charging them with an alleged crime? You might put anything on there, but the original papers stated the facts.

A. This paper states what was on the original.

Q. But you admit yourself that the original was destroyed, isn't that true?

A. That is right.

Q. Do you want the jury to understand in questioning people at the police court, you destroy the records and make up typewritten copies? Do you want the jury to understand that?

A. Not always.

Q. But they are in some?

A. In cases of this kind.

Q. Why should they? These people so far as you were concerned were committing a crime?

A. There is quite a difference between a felony and a misdemeanor.

Q. That might be true. You say you talked with all of the people arrested that night?

A. We did.

Q. Whether or not any of them instead of saying they were parading said they were in an information march?

A. They did not.

Q. None of them?

A. None of them.

Q. Not one person you talked with denied they were in a parade but said they were in an information march. Is that true?

A. Not a single one.

Q. Not one. Now, Inspector, I want to know how many people if you know, were detained that night?

A. Eighty-eight.

Q. What happened to the balance of the hundred and six?

A. I didn't know there were one hundred and six there, unless there were one hundred and six brought in and the other eighteen went out the side door.

Q. You heard Lieut. Manning's statement they booked twenty-nine. You have a record of eighty-eight. Now, who if anyone allowed them to go?

A. Who do you mean?

Q. In the police department, who allowed them to go? Lieut. Manning testified he booked twenty-nine.

A. That's right.

Q. You say eighty-eight. Therefore the difference be-
[fol. 21] tween eighty-eight and twenty-nine would be quite a number that were not there. Who let them go out of the station?

A. I didn't say we booked eighty-eight; I said there were eighty-eight there.

Q. Do you know how many went out on bail?

A. Yes, sir.

Q. How many?

A. Twenty-nine.

Q. That is all?

A. That is all.

Q. How did the rest get out?

A. There were forty women and nineteen children, from the age of nine years old. Some of these children didn't have anybody to care for them, so we decided to let the women go, to be back at court on Monday morning, on their own recognizance.

Q. Who made that decision?
A. Inspectors Sullivan and Kelly and I.
Q. Without any order from the person in charge?
A. Without any order from him.
Q. After you let them go, which was practically fifty-nine of them, you had no talk with the lieutenant in regard to it, and he was in charge of the station that night?
A. Yes, we did too.
Q. Then he knew you were going to let these fifty-nine go?
A. At that time, yes.
Q. You say how many children were there?
A. Nineteen.
Q. And how many women?
A. Forty.
Q. Now were there any that were arrested that night by your officers, were there any that were let go to your knowledge besides the ones you mentioned, these women, forty of them, and nineteen children?
A. You mean let go on their own recognizance?
Q. Let go in any way?
A. Not that I know of.
Q. Inspector, you did book some women, did you not?
A. No, sir.
Q. You didn't book any women?
A. No, sir.
Q. Not at all?
A. No, sir.
Q. Did you take their names?
A. Yes, sir.
Q. They were out on their own recognizance by your order and the other inspector's orders to report on Monday morning. Is that right?
A. That is right.
Q. What time were the first ones liberated by you, what time of the night?
A. I don't remember exactly. It was somewhere around midnight.
Q. Those at that time who were let go around midnight were who?
A. Women and children.
Q. Women and children. Whether or not you knew any of them to be husband and wife?
A. I believe some of them were.

Q. Therefore you detained the husband and allowed the wife and children to go at midnight?

A. I couldn't say the exact time, but it was very late. Around midnight I should say.

Q. That is true, you kept the husband, which you knew from your talk with them, you knowing there was husband [fol. 22] and wife and children there, you let the wife and children go at midnight and detained the husband. Is that right?

A. That is correct.

Q. Now, Inspector, if you know, when was the first person liberated on bail?

A. I don't know that.

Q. Were you present at the station?

A. When they were liberated?

Q. Yes.

A. I couldn't say; I don't know when the first man got out.

Q. You were there, weren't you?

A. I was upstairs.

Q. You had questioned them?

A. Yes, sir.

Q. You had all the information?

A. Yes, sir.

Q. And you say there was only twenty-nine of them that were booked and those twenty-nine may have got bail and may not, so far as your knowledge is concerned?

A. Yes.

Q. Do you know of your own knowledge whether or not any got bail?

A. Not of my own knowledge. I know they were released and I know the police blotter says they were released on bail. I wasn't there when they were bailed out.

Q. You were very much interested in the case, having talked with every one of them?

A. Yes, sir.

Q. Therefore if they were liberated on bail, you were interested to know whether or not they got bail?

A. No, sir.

Q. All right. How were they liberated, do you know?

A. I can't tell you; I understand on bail.

Q. Is that through a commissioner, a bail commissioner?

A. That is correct.

Q. Whether or not at midnight or any other time did you see the bail commissioner around there?

A. I didn't. No.

Q. You don't know who liberated them, so far as bail was concerned of your own knowledge?

A. I do not.

Q. You didn't see William McCarthy the bail commissioner there that night?

A. Not that I know of.

Q. Whether or not you were downstairs when any of them were liberated?

A. No, sir.

Q. So far as your own knowledge is concerned, these twenty-nine you booked were still in jail Monday morning? Is that correct?

A. No. I knew they got out.

Q. When did you know they got out?

A. I knew it the next day, Sunday.

Q. At that time, Sunday, whether or not to your knowledge they were all liberated?

A. I don't know.

Q. Well, now perhaps I may refresh your recollection. You say you don't know whether there was anybody in the station when you came on duty the next day?

A. There was some. I don't know who they were or how many, but there was some who refused to be bailed out.

Q. You know that information by being a police officer and being in the station the next day?

[fol. 23] A. Yes.

Q. They were still confined there when Court came in Monday morning?

A. I think there were some of them.

Mr. Broderick: May I inquire the purpose of this questioning? What difference does it make?

Mr. Barnard: It is part of the defense in this case; what happened to them in our opinion is material and very material.

The Court: What is your question now?

Q. Whether or not they were in jail and confined when brought to Court on Monday morning?

The Court: What do you suggest ought to have been done?

Mr. Barnard: I have no suggestion. I am trying to prove from this witness—he should know, he was interested, he questioned every one of these people, he knew about them, and it is perfectly natural he should know the next morning if they got out and if not who remained there?

The Court: They all got to Court Monday morning?

Mr. Barnard: True.

The Court: Because they were detained in jail, were out on bail or came back voluntarily?

Mr. Barnard: Or because they couldn't get bail.

The Court: Isn't that the usual procedure? If a person doesn't get bail they are confined until they have a chance to be brought before the Court?

Mr. Barnard: No, Your Honor. Here is a case where people were on an information march, the police department charges they should have had a permit, they say no, they were all information marchers, they were only informing the people. We say they have a right to present to the jury all the facts connected with the case if they are going to make a decision.

The Court: It appears some went home on their own recognizance, some were detained in the station, some got bail and some didn't. Now, what is the next thing? That already appears. What else is there? What do you want me to rule on?

Mr. Barnard: Your Honor, I feel——

The Court: Ask your question.

Q. Inspector, I understood you to say there were some of them still in the station when you came down there Sunday?

A. Yes, sir.

Q. There were also some still in the station when you came Monday. Is that right?

A. Yes, sir.

Q. They did not get bail, so far as you know?

A. Yes, sir.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. Once a person is booked for the commission of a crime or misdemeanor, what further duties do you have to perform as inspector?

A. None whatever; he is entirely out of our hands.

Q. Why did you say you were not interested in their get-
[fol. 24] ting bail?

A. Because the bail commissioner is the only one who can accept bail for them.

Q. After a person is booked, it is then out of your hands entirely?

A. Yes.

Q. What jurisdiction do you as inspector of police have over the bail commissioner?

A. None.

Q. Was there any complaint made to you in your individual capacity as inspector by any of these parties as to ill treatment or discourteous treatment on the part of the police?

A. None whatever. Some requested to use the telephone and were allowed to use the telephone. Mr. Bailey was one of them. He even wanted to call Lowell, Mass., because he has a baker shop there and he was allowed to.

Q. Do you know of your own knowledge the condition of traffic on the night of July 8th?

A. Traffic was heavy.

Q. I am now referring to the sidewalks. What was travelling conditions on the walks?

A. There was a lot of traffic, both vehicular and on the sidewalks.

Q. Which nights of the week is there the most traffic in Manchester?

A. Thursday and Saturday nights.

Q. You say you spent considerable time with these respondents, Inspector, obtaining names, addresses and so forth?

A. Yes.

Q. That is the document you now have before you?

A. Yes.

Q. The names in that document were taken, it would be fair to say, from your scraps of paper or notations?

A. Yes.

Q. Will you give us the names and age and address of these respondents?

A. Gordon Bailey, age 36, Lowell, Mass.

The Court: Do you mean just those on trial?

Mr. Broderick: I had in mind all of them.

A. Sara Bailey, age 64, Lowell, Mass.; Ida Bailey, age 37, Lowell, Mass.; Bertha Benoit, age 39, Nashua, N. H.; John Bonville, age 35, Hudson, N. H.; Lucienne Bonville, age 27, Hudson, N. H.; Chester Burnham, age 44, Westford, Mass.; Vera Burnham, age 42, Westford, Mass.; Thomas Bridgeford, age 73, North Chelmsford, Mass.; Anna Canfield, age 66, West Chelmsford, Mass.; Ethel Campbell, age 47, Hudson, N. H.; George Caron, age 34, Manchester, N. H.; Yvonne Caron, age 33, Manchester, N. H.; Walter Chaplinsky, age 25, Manchester, N. H.; Esdras Choirnard, age 61, Manchester, N. H.; Josephine Choirnard, age 49, Manchester, N. H.; Leah Choirnard, age 25, Manchester, N. H.; Marion L. Clemons, age 50, West Chelmsford, Mass.; Willis Cox, age 71, Manchester, N. H.; Mildred Cummings, age 52, Billerica, Mass.; Alice Despotakes, 19, Lowell, Mass.; John Douglas, aged 21, Manchester, N. H.; Daniel Fitzpat-
[fol. 25] rick, age 37, Lowell, Mass.; Jennie Flackowicz, age 21, Hudson, N. H.; Helen Flackowicz, age 42, Hudson, N. H.; Joseph Galecki, age 50, Hudson, N. H.; Anna Galecki, age 48, Hudson, N. H.; James Gianoulis, age 20, Lowell, Mass.; Charlotte Gianoulis, age 20, Lowell, Mass.; Rena Gianoulis, aged 18, Lowell, Mass.; Mildred Gowing, age 45, Hudson, N. H.; Christos Gravas, age 57, Manchester, N. H.; Sophie Gravas, age 50, Manchester, N. H.; Napoleon Isabelle, aged 29, Manchester, N. H.; Beatrice Ives, age 18, Hudson, N. H.; Vasilios Jantfaris, age 50, Manchester, N. H.; William Jones, age 32, Manchester, N. H.; Rose Juneau, age 26, Manchester, N. H.; Walter Karwacki, age 45, Manchester, N. H.; Josephine Kondziela, age 26, Lowell, Mass.; John Konides, age 41, Manchester, N. H.; Constance Konides, age 18, Manchester, N. Y.; Olga Konides, age 40, Manchester, N. H.; Arthur Leppage, age 60, Chelmsford, Mass.; Milton Leiby, age 42, Manchester, N. H.; Anna Lundberg, age 65, West Chelmsford, Mass.; Pauline Lundberg, age 20, West Chelmsford, Mass.; Lena Lundberg, age 50, West Chelmsford, Mass.; Paul V. Lundberg, age 51, West Chelmsford, Mass.; Stergious Mingus, age 45, Manchester, N. H.; Arvid Moody, age 29, Boston, Mass.; Ruth Nelson, age 28, Westford, Mass.; Thyra Nelson, age 23, Westford, Mass.; Irene Pappacostas, age 42, Manchester, N. H.; Steve Pappas, age 46, Manchester, N. H.; Antoinette Paquette, age 31, Manchester, N. H.; Artemise Paquette, age 54, Manchester, N. H.; Hector Paquette, age 29, Manchester, N. H.;

Orvilla Paquette, age 31, Manchester, N. H.; Helen Poulos, age 24, Manchester, N. H.; Athena Rousten, age 49, Manchester, N. H.; Orin Shirley, age 58, Manchester, N. H.; Wacenty Sienkiewicz, age 50, Nashua, N. H.; Katherine Skwazynska, age 41, Manchester, N. H.; Lucy Skwazynska, age 21, Manchester, N. H.; Bertram Stockham, age 32, East Chelmsford, Mass.; Henry Tardiff, age 38, Nashua, N. H.; Doris Tardiff, age 35, Nashua, N. H.; Elmer Witherbee, age 18, Manchester, N. H. Shall I read the names of the children?

The Court: The officer suggests it might be well not to read the names of the children, that is the juveniles. It there any objection to that?

Mr. Broderick: No.

The Court: All right, they may be omitted.

Mr. Broderick: You may inquire.

Recross-examination.

By Mr. Barnard:

Q. Inspector, on Saturday night, July 8th, from six o'clock in the afternoon were you on the streets of Hanover, [fol. 26] Elm, Manchester and West Merrimack?

A. I was on the street from about ten minutes of seven until about 7:30 that evening.

Q. Whereabouts were you on the street?

A. I was on Chestnut Street and on Hanover Street.

Q. Whereabouts were you on Hanover Street?

A. I went down Hanover Street to Elm.

Q. Then where did you go?

A. Back to the police station.

Q. By retracing your steps?

A. Yes.

Q. Did you see the Witnesses, the respondents, on the street that evening?

A. No, sir.

Q. What time—do you know where the Odd Fellows Block is?

A. I do.

Q. That is how far west of Chestnut Street in your opinion?

A. I should say about one hundred and fifty feet.

Q. Now, when you came from the police station to go onto Chestnut Street did you go north or south on Chestnut Street?

A. North.

Q. Hanover Street is north of the police station?

A. Yes, sir.

Q. Then did you go down Hanover Street—on which side of the street did you go down Hanover St.?

A. On the north side of the street.

Q. The north side?

A. Yes, sir.

Q. What time did you leave the station?

A. Well, I left the station about five o'clock, quarter past five. I went home to supper, changed my clothes and came back down.

Q. I mean at six o'clock.

A. Well, I wasn't at the station from quarter past five until seven thirty.

Q. Yes. I understood you were on the street from six o'clock until seven thirty.

A. No, I didn't say that. I said between ten minutes of seven and seven o'clock until about seven thirty.

Q. Until about seven thirty?

A. Yes.

Q. You heard the lieutenant testify that the matter was first brought to his attention when the first group was brought in there at 6:15, didn't you?

A. Yes, sir.

Q. Do you know where they picked that group up, of your own knowledge?

A. I do not, not of my own knowledge.

Q. You say you came down Chestnut to Hanover. Which way did you go on Hanover?

A. I went west.

Q. Were you at any location different than from Hanover and Elm Street while you were down on Elm Street?

A. No, sir.

Q. Then you retraced your steps from down on Hanover and Elm back to the station, east on Hanover Street. Is that right?

A. Yes.

Q. Do you recall whether or not—what was the condition of the weather that night while you were out?

A. As I recall it was fair.

Q. Was it hot or was it cold?

A. Well, it wasn't hot and it wasn't cold, I would say.

Q. It wasn't cold?

A. It wasn't cold.

Q. It seemed to be hot enough so people were going [fol. 27] around in their shirt sleeves?

A. I don't know. That would depend on the person. I had my coat on.

Q. Whether or not you saw many officers that night in their shirt sleeves, whether they were on duty or not, while you were out?

A. I did not.

Q. Now, officer, when—I would like the time as near as possible—when were you at the corner of Hanover and Elm Streets?

A. Did you say Hanover and Elm?

Q. What time were you at the corner of Hanover and Elm Streets?

A. Probably five minutes past seven.

Q. Now, I understood in your direct examination you testified to my brother that traffic was heavy?

A. Yes, sir.

Q. Did you mean that?

A. Yes, sir.

Q. What do you mean by heavy traffic?

A. Somebody constantly walking on the sidewalks; automobiles passing.

Q. As you walked up the street, whether or not you were obliged to duck traffic because it was so thick?

A. Oh, no.

Q. Did you have any trouble walking from Hanover Street to the station because of the traffic?

A. Oh, no.

Q. Inspector, at seven o'clock at night you have been on the streets a great deal. Is traffic heavy that time of day, and was it heavy that night?

A. Ordinarily it is heavy on Saturday and Thursday nights, and it was heavy on that night.

Q. Now, when you left—your best recollection is you left Hanover and Elm at about five minutes past seven.

A. Yes, sir.

Q. When you arrived at the station had there been any of the information marchers brought in to the station when you got there?

A. Yes, sir.

Q. Do you know of your own knowledge who brought them in?

A. I do not. I was told, but I couldn't say.

Q. Not of your own knowledge?

A. Not of my own knowledge.

Q. Where were they when you got to the station?

A. When I got to the station they were upstairs in the inspectors department.

Q. If you know of your own knowledge, how many were in that group?

A. When I got there?

Q. Yes.

A. I don't know. The best I could do would be to guess at it.

Q. Were you there when the other groups were escorted there by the police?

A. Yes, sir.

Q. How many groups came in afterwards?

A. That I couldn't tell you.

Q. I understood you to say you retraced your steps, going east on Hanover Street to Chestnut and then to the police station. Is that right?

A. Yes, sir.

Q. I also understood you to say you did not see any of these marchers on the street?

A. I did not.

Q. Whether or not you started booking those that you found at the station immediately on arriving at the station?

[fol. 28] A. No, sir.

Q. Did you start questioning them then?

A. Yes, sir.

Q. After questioning them, you did not book them after questioning them?

A. No, sir.

Q. If I understood you correctly, you talked with all of them?

A. Yes, sir.

Q. Now, Inspector, isn't it a fact that that night was a very hot night and traffic was not very thick, either on Han-

over or Elm Street that night when you returned up Hanover and Elm toward the station?

A. Traffic was heavy.

Q. You were not out on the street afterwards, after you returned to the station?

A. No, sir.

Q. So you don't know what the condition of the traffic was after you left Hanover and Elm Street?

A. I do not.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. Whether or not you are able to testify of your own knowledge on this night of July 8th whether it would be possible for an individual to walk from Hanover and Elm to Concord or Amherst Street without stepping aside at any time for pedestrians?

A. It would not.

Mr. Broderick: That is all.

Sergt. Thomas C. Austin, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your full name?

A. Thomas C. Austin.

Q. You are a sergeant connected with the Manchester police department?

A. Yes, sir.

Q. Whether or not you were on duty July 8th last, Sergeant?

A. Yes, sir.

Q. On that night whether or not you made some arrests?

A. Yes, sir.

Q. Tell the court, please, in your own words whom you arrested and where.

A. I stopped twenty-five Jehovah Witnesses parading. They went up Elm Street and I stopped them on Lowell, just east of Elm. Mr. Konides was leading them. I asked

if he had a permit. He said, a man has gone down to the station to get permission. I said, that is no good, you can't get permits from the police. He said, that is right, we have got a ruling from the Supreme Court. I said, you and this group had better go down to the station.

Q. Did he admit he had no license?

A. Not in that conversation.

Q. As a result was Mr. Konides arrested?

A. Yes, sir.

Q. Are you able to identify Mr. Konides?

A. He is the man in the seat over there.

Q. He is the man in the seat over there with the light hat in his hand?

A. Yes.

Q. About what time did this arrest take place?

A. It was just 7:20 when I came into the station. I would say it was between quarter past and 7:20 when I stopped them.

[fol. 29] Q. What was the condition of traffic in regard to sidewalks?

A. Both sidewalk and street traffic was heavy.

Q. Whether or not it would be possible for one to walk from Hanover Street to Concord Street without stepping aside?

A. It would be impossible.

Q. Do you say that not having these people who were parading on the sidewalks in mind?

A. Yes.

Q. What distance would you say these people marched from one another?

A. They were as close together as they possibly could be without stepping onto each other. It would be impossible for a person to walk between them without pushing himself through.

Q. Whether or not they carried placards and cards?

A. Yes, they did.

Q. Would you say these were the signs they carried?

A. Some of the signs? Yes.

Q. Whether or not Mr. Konides carried a sign?

A. He did. Every one of that twenty-five had some kind of a sign or placard.

Q. Aside from parading single file carrying these signs, did you see any of these respondents doing anything else?

A. No, I didn't.

Q. Did you notice whether or not they were giving out any handbills?

A. Mr. Konides had some but I didn't see him giving them out.

Q. Did he have them openly as he was going about?

A. No. He had a small bunch in his hand; he didn't have many.

Mr. Broderick: That is all.

Cross-examination.

By Mr. Barnard:

Q. Sergeant, on the night of July 8th, I understood you to say you stopped some Witnesses and asked them if they had a permit?

A. Yes, sir.

Q. Whereabouts was that that you stopped them?

A. On Lowell Street just east of Elm.

Q. Where were you?

A. I was on Elm Street, coming south on Elm Street. I see them walking north on Elm Street and turn east on Lowell Street.

Q. They turned east on Lowell Street?

A. Yes.

Q. Whether or not you went over to the head of the line?

A. I did.

Q. How much—how many of that line passed you before you got to the head of the line, if any?

A. Passed me?

Q. Yes.

A. There wasn't any passed me.

Q. How many were in that line?

A. Twenty-five.

Q. How do you know there were twenty-five?

A. I counted them.

Q. When?

A. When they were going into the station.

Q. You didn't count them at the corner of Elm and Lowell?

A. No, I didn't keep them there any longer than I could help on account of traffic and people was gathering.

Q. Were they any way except in single line?

A. No, they were in single line.

Q. I understood you to say they were very close to one [fol. 30] another?

A. Yes, sir.

Q. Now, Sergeant, is it a fact they were at least eight or ten feet apart when you stopped the head of that line?

A. No, sir.

Q. You stopped them only a minute?

A. I stopped them only a minute.

Q. Who did you talk to?

A. Mr. Konides.

Q. Did you go to the station with Mr. Konides?

A. I did not. I told Mr. Konides to go to the station and I drove the car I had to the station.

Q. Were you in a cruiser car at that time?

A. Yes, sir.

Q. Did you go with them to the station?

A. No, sir.

Q. Where did you go?

A. I went up Lowell Street and was going down Chestnut Street. Traffic was very heavy. I went to Pine, down Pine to Manchester, from Manchester south on Chestnut and back of the station with the car.

Q. Now, Sergeant, as a matter of fact you don't know how near those information marchers were to one another after you left them?

A. I saw them when they came up Elm Street and turned east on Lowell Street and they were as close as could be without interfering with each other.

Q. You were coming down Elm Street?

A. Yes.

Q. You turned up Elm at the head of the line?

A. At Lowell Street.

Q. You got to the head?

A. Just as they got to the back street on Lowell Street east of Elm Street.

Q. Where was the foot of that line when you drove into Lowell Street?

A. I don't know where the foot of the line was when I drove into Lowell Street. The head was just about half way between the Public Service building on Lowell and Elm Street.

Q. About half way between?

A. Yes.

Q. How many, to the best of your recollection, were in that march at that location, on Lowell Street?

A. Twenty-five. I say twenty-five. I believe every one I told to go to the station went there.

Q. Whether or not you told each one in the group to go to the station?

A. No. I stopped Konides. He stopped; they all stopped. I asked if he had a permit. He said no, a man is going to the station to get a permit. I said, you go to the station and take this bunch with you. I got into the car and drove off. I didn't talk with the rest of them.

Q. Your car was parked where?

A. On Lowell Street.

Q. On Lowell Street?

A. Yes.

Q. How far from Elm?

A. Just west of the back street; I was double parked.

Q. You got out of the car and came down to the head of the line?

A. I got out of the car and came down and met the head of the line right near the back street.

[fol. 31] Q. You met the head of the line between the back street and Elm Street?

A. Yes.

Q. It was impossible for you to see the foot of the line, wasn't it?

A. It was impossible to see the foot of the line?

Q. Yes.

A. No, sir; I saw the whole line.

Q. How were the Witnesses marching?

A. Single file.

Q. Do you think there were twenty-five people between the place you stopped them and Lowell Street?

A. I didn't say that.

Q. The corner of Lowell and Elm?

A. I wouldn't say. I said twenty-five went to the station and I think the whole bunch I stopped went to the station. There may have been more in the line but I don't think so. I think the whole of them went to the station.

Q. Do you know how many were there at the time you stopped them on Lowell Street?

A. I don't know.

Q. Sergeant, what kind of a day was it, was it hot?

A. It was warm. I don't remember as it was very hot, but it was hot. I don't remember just how hot it was.

Q. What is your best recollection of the time you stopped them?

A. I should say between quarter past and 7:20; 7:15 to 7:20. They came in the side door on Manchester Street just about 7:20.

Q. Were you out on the street after you went to the station?

A. No, sir.

Q. Whether or not you saw any of the other marchers?

A. I did not.

Q. Were any instructions given you by anybody in regard to the members marching that night?

A. I was told there was some of them marching and I had been told some of the Jehovah Witnesses had been brought in the station for marching.

Q. Where were you told that?

A. In the station.

Q. In the station?

A. Yes.

Q. What time was that?

A. I don't know; I should say 7 o'clock.

Q. After you got that information was any directions given you by the police to do anything?

A. There wasn't any directions given me to do anything, no. In the signal room, signalman Kelly received a telephone call. He turned around and said, I got a call, there are some Jehovah Witnesses parading on Elm Street and turning up Elm.

The Court: You mean turning up Lowell?

A. No, Officer Kelly said he received information they were going down Hanover onto Elm.

Q. With that information you immediately went to the cruiser?

A. No, sir.

Q. Where did you go?

A. I went out to get the car to cruise around.

Q. You went to get the car to cruise around?

A. Yes.

Q. The only ones you saw on the street were these that you arrested and sent to the station?

A. Yes, sir.

Q. You didn't go with them?

A. No, sir.

[fol. 32] Q. You told them to go to the station?

A. Yes, sir.

Q. You don't know how they went to the station, do you?

A. As I went up Lowell Street I looked back. They were walking east on Lowell. When I got to Chestnut, I see them go through the common and I know they turned from Chestnut Street onto Manchester.

Q. What was the distance they were apart went you saw them go across the common, or going down Chestnut Street?

A. About the same distance as when I stopped them, as close as could be together.

Q. Were they abreast of one another?

A. No, sir.

Q. They were all in single file?

A. Yes, sir.

Q. Very close together?

A. Yes.

Q. Would you say close together would be two or three feet apart?

A. Yes, it would be that close. They were as close together as it was possible for them to get without interfering with each other's walking.

Q. As you saw the group marching down Chestnut Street, what was the condition of the traffic?

A. When I went up Lowell to turn south on Chestnut, the traffic was so heavy I didn't turn. I went to Pine Street. The traffic there was not very heavy.

Q. When you saw them walking south on Chestnut Street and as they crossed the common, what was the condition of the traffic?

A. Motor vehicles or pedestrian?

Q. Motor vehicles and pedestrians.

A. Motor vehicles was heavy but the pedestrian was not very heavy.

Q. Was there anyone on Chestnut Street at that time?

A. Oh, yes, there were people on the street.

Q. How many to the best of your recollection was there between Concord and Amherst Streets?

A. I wouldn't estimate that.

Q. Fifty?

A. I would say more than fifty in that distance. On Saturday night traffic is pretty heavy all through there It was not as heavy as on Lowell and Elm Street.

Q. But on Saturday night of July 8th, when this informa tion march was on, what was the condition of the traffic a that time, on that day?

A. It was heavier than any other day except Thursdays and Saturdays.

Q. And at that location where you saw them, where you stopped them and saw them coming down Chestnut Street toward the station?

A. There were some.

Q. They went through the common?

A. Chestnut Street goes through the common.

Q. Chestnut Street goes through the common, so they were marching down Chestnut Street with the common on each side. Is that it?

A. Yes, sir.

Q. Now, Sergeant, I don't want to misquote you. I understood you stopped them on Lowell Street, about half [fol. 33] way between Elm and the back street. Now, at the time you stopped them did the other marchers congregate around you and come up to you at all, with the exception of the person you talked with?

A. No, sir, they did not leave the line.

Q. Did you instruct anyone else except the one who was at the head of that line to go to the station?

A. No, sir.

Q. Whether or not you saw any trouble of any kind by reason of these information marchers being on the street?

A. Any trouble?

Q. Yes, of any kind.

A. I don't think I quite understand. Do you mean trouble with pedestrians getting by them?

Q. Whether or not there was any trouble?

A. Yes. When they turned from Elm onto Lowell Street there was quite a few people had to stop. They were about in the middle of the walk on Elm Street. When they turned they interfered with people traveling in both directions and they had to stop and let them by.

Q. They were within two or three feet of one another?

A. Yes, they were within two or three feet of one another.

Q. And still no one came up to you when you talked with the man at the head of the line?

A. No. No one left the line and nobody talked to me. What I testified I said to Mr. Konides was the only conversation on Lowell Street. I don't think that was a minute.

Q. Whether or not you remained at the corner and saw the end of the line go by?

A. No, I did not remain at the corner.

Q. You got into your car and started for the station. Is that right?

A. That is right.

Q. Now, Sergeant, whether or not you saw them commit—whether or not there was any conduct by them that would be a breach of the peace, while you being an enforcement——

Mr. Broderick: Just a minute. There is no such charge in this court as to any breach of the peace.

The Court: Just what do you mean by breach of the peace? I don't know what that term embraces.

Mr. Barnard: Whether or not these marchers interfered with the public, or caused any collision so that the peace would be broken by virtue of this information march having been stopped by the police, whether there was anything done by these marchers to indicate they were anything but on the street for the purpose.

Mr. Broderick: Having in mind the signs, I submit that is purely a question of fact for the jury to determine.

The Court: The real issue is whether there was a parade and whether there was a permit. The officer said there was some difficulty with people getting by. Do you mean something in addition to that, Mr. Barnard?

[fol. 34] Mr. Barnard: Yes.

The Court: By breach of the peace do you mean violence?

Mr. Barnard: I mean anything, as a police officer, anything he would call a breach of the peace, that they were doing, something besides this information march, did they do anything to cause a breach of the peace, to his knowledge.

The Court: All right, officer you may answer.

A. The only breach of the peace was that interference with the travel of the public, the public walking. As I said, the people traveling on the sidewalk had to stop and let them go by.

Q. You were there. How many, at the corner which will be the south side of Lowell Street which is where I under-

stand they were, how many people were there when they stopped at the corner of Elm and Lowell Streets?

A. I wouldn't estimate. There was a lot of pedestrians out that night. Traffic was heavy. I wouldn't undertake to estimate how many. There was a great deal.

Q. Was there ten?

A. If they only interfered with ten I wouldn't say they interfered with travel. I would say nearer two hundred, if you want an estimation.

Q. So your best recollection would be that when you stopped the head of the line——

A. Not when I stopped the head of the line.

Q. When they were coming around the corner?

A. That's right.

Q. Of Elm and Lowell Street, there were two hundred stopped by virtue of these marchers coming up there?

A. I would rather not estimate, but if you want an estimate I would say at least two hundred.

Q. At least two hundred?

A. Yes, sir.

Q. Now, Sergeant, this two hundred, where were they standing?

A. On the sidewalk, stopped to let the parade get by.

Q. They were in Lowell Street?

A. When they turned from Elm into Lowell.

Q. Do you mean they passed two hundred people at the corner of Elm and Lowell Streets?

A. How many people they passed I could not say. I would say at least two hundred people had to stop when they turned off Elm Street into Lowell.

Q. Which way were the pedestrians going, north or south?

A. Both directions.

Q. They were going in both directions?

A. Yes.

Q. As a matter of fact, when you stopped them half way up there between Elm and the back street on Lowell, you could see only a small part of Elm Street south?

A. When I testified what I saw on Elm Street isn't what I saw after I stopped them, but before I stopped them. This was when they turned from Elm onto Lowell. After, I couldn't see them all.

Q. You came in your car on Elm Street and turned into [fol. 35] Lowell Street and stopped?

A. Yes.

Q. How many people were there on Lowell Street when you got there?

A. I don't know.

Q. Any?

A. Yes, quite a few.

Q. So the two hundred people you have reference to are people travelling up and down Elm Street?

A. Yes, sir.

Q. As far as you could see down the street and as far as you could see up the street?

A. No, not as far as I could see down the street.

Q. You can't tell how many people there were on Lowell Street between Elm and the back street?

A. I would say probably there was fifty people stopped when I stopped these people.

Q. That is on both sides of the street?

A. I didn't do much looking around. I wanted to get the people out of there as soon as possible. I was double parked. I didn't want to tie up traffic. I told them to go to the station.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. You stayed one minute with this fellow?

A. One minute at the most.

Q. Can you tell us the name of the building where you stopped these people?

A. Public Service.

Q. The Public Service Co. of New Hampshire building?

A. Yes, sir.

Mr. Broderick: That is all.

GEORGE P. REARDON, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your full name, please?

A. George P. Reardon.

Q. You are an inspector for the Manchester police department?

A. Yes, sir.

Q. Whether or not on Saturday, July 10th last you were on duty?

A. July 10th?

Q. July 8th.

A. July 8th, yes.

Q. That was Saturday night, was it not?

A. Yes.

Q. On that night do you recall whether or not you stopped a procession?

A. I was with Officer Moran when he stopped them at the corner of Hanover and Chestnut Street, across Chestnut on Hanover.

Q. What building is across Chestnut on Hanover?

A. On the opposite corner is the Post Office.

Q. About what time was that?

A. I should say about quarter of seven, 6:45.

Q. What was the condition of traffic at 6:45?

A. Very heavy on Hanover at Chestnut; it always is Saturday night.

Q. Did you talk with anybody in that group?

A. Mr. Moran talked with Mr. Paquette. Officer Moran was in uniform. He did the talking. He asked if he had a permit.

Q. What did he say, if anything?

[fol. 36] A. He said he didn't have to have a permit. He said he had a ruling from the Supreme Court. Officer Moran said you would have to get a permit from the City Hall.

Q. How many were in that group?

A. About twenty-five.

Q. Are you able to identify Mr. Paquette?

A. Yes, sir.

Q. Whether or not they carried any banners?

A. Yes, they had banners. Those kind here.

Q. Whether or not they had any handbills?

A. I didn't see any handbills. No, I didn't see them.

Q. But you did see the banners?

A. I saw the banners. Some had these front and back, what they call sandwich things.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. Whether or not you were in the station when Mr. Cox and Mr. Lieby came there?

A. I was.

Q. Whether or not anything was said about an information march by Mr. Cox on Mr. Lieby?

A. I didn't hear no mention about an information march. They talked about a parade.

Q. In your presence did they ask for a permit?

A. They said they were going to have a parade. The lieutenant asked if they had a permit. They said no. The lieutenant told them they would have to have a permit from the city hall. Mr. Cox said they were going to parade anyway and they walked out.

Q. What if anything was said to you by your superior officer?

A. Not a thing.

Q. What was the first information you had that they were on an information march?

A. Nothing was said to me about an information march.

Mr. Broderick: That term has been used throughout the trial. The only time the term "information march" has been used is by my brother. There is no evidence of it, and I submit it is unfair.

The Court: The officer said he didn't hear anything about an information march.

Mr. Barnard: That is one of the questions to be decided, whether this was a parade, a procession or an information march.

The Court: What is the difference?

Mr. Barnard: That is what we are trying to show here.

The Court: Well, the witness says he didn't know anything about an information march.

Mr. Barnard: That is all right on the part of the witness.

Q. Inspector, when was this first called to your attention, was anything called to your attention relative to this march?

A. Well, I stood around the statior for a while after Mr. Cox and Mr. Lieby went out. Then I went and had lunch. I was over to the corner of Hanover and Chestnut when Officer Moran came along, and this parade came across the

[fol. 37] street. Officer Moran stopped them and sent them to the station.

Q. What time was that, to the best of your recollection?

A. To the best of my recollection it was quarter of seven.

Q. Whether or not you know where these witnesses had come from?

A. I could look down the street and see a delegation starting from in front of Odd Fellows Hall.

Q. To the best of your recollection how near were they together?

A. Just as near as they could be without stepping on each other.

Q. From where you were standing, which I understand was on the south side of Hanover and the east side of Chestnut——

A. Yes.

Q. Whether or not you could see the end of the line?

A. Well, the end of the line had crossed Chestnut Street when the officer stopped them.

Q. I mean the rear of the line.

A. Yes. I stopped at the rear myself.

Q. Where were they when you stopped them?

A. Just east—I didn't stop them, Officer Moran stopped them.

Q. How many were on Chestnut Street at the time they were stopped?

A. Just the end of the line. The rear of the parade, I would call it.

Q. The rear of the line?

A. The rear of the line.

Q. So there is no mistake, they were all in the street?

A. They had just crossed Chestnut Street when Officer Moran stopped them.

Q. That group was headed by Mr. Paquette?

A. Yes.

Q. Where was the rear of that line?

A. Right at the corner of Hanover and Chestnut.

Q. So that they were all located on Chestnut Street?

A. No, they were across Chestnut.

Q. Through from the east to the west side, and therefore they were all in Chestnut Street when stopped by Mr. Moran?

A. Yes.

Q. How were they marching at that time?

A. Single file.
Q. They were marching single file?
A. Yes.
Q. And within two or three feet of each other?
A. I should say so.
Q. Do you know how wide Chestnut Street is at that location?
A. No, the width of it I couldn't tell you.
Q. Now where was the head of the line when Officer Moran stopped them?
A. Just turned onto Chestnut Street from Hanover.
Q. On the east side of Chestnut?
A. On the east side of Chestnut, yes.
Q. The other side from us here. Were they stopped on Hanover Street or on Chestnut Street?
A. Some were on Hanover Street.
Q. And Mr. Paquette?
A. He was on Chestnut.
Q. How far on Chestnut Street?
A. Twenty feet.
Q. Twenty feet going south?
A. South.
Q. Isn't it a fact that so far as Chestnut Street was con-
[fol. 38] cerned, where Mr. Paquette was, there wasn't more than five people?
A. There was more than that. It was seven o'clock at night. Chestnut and Hanover is a busy corner.
Q. You say Mr. Paquette stopped twenty feet south of Hanover Street on Chestnut Street?
A. That is what I should judge.
Q. Isn't it a fact there was only four or five there on Chestnut Street?
A. More than that.
Q. Do you say they were all on Chestnut Street?
A. Most of them had got into Chestnut Street.
Q. Of the twenty-five you counted going in there?
A. I didn't count them. I estimated twenty-five.
Q. That is the only time you estimated, when they were going in the station?
A. Yes.
Q. Did you go to the station with them?
A. Officer Moran lead them in; I went at the rear.
Q. When you went at the rear did you talk with anyone?
A. No one at all.

Q. Having gone at the rear, when Mr. Moran went into the station house where were you on Chestnut Street?

A. I was probably right beyond the corner of Manchester Street at the rear of the procession, I probably had reached as far as the car tracks.

Q. When Officer Moran stepped into the station, you were at the rear and therefore those paraders——

A. They had started into the station.

Q. They had started into the station and the rear was in Manchester St. Is that right?

A. Just this side of the car line, yes.

Q. How were they going in, in pairs?

A. No, all single file.

Q. You say they were two or three feet apart in your opinion?

A. Two feet. Just as close as they could be marching without stepping on each other.

Q. You were close to Officer Moran when he stopped Mr. Paquette?

A. Yes.

Q. Whether or not there was any crowd around you when you stopped him?

A. Quite a few spectators, passers-by.

Q. I mean those in the march.

A. No, just people who were walking along.

Q. They were outside pedestrians?

A. Yes.

Q. The marchers didn't come up to see what you and the officer and Mr. Paquette were talking about. Is that right?

A. Yes.

Q. Whether or not you know whether the others in that line stopped also? Did you see them?

A. They all stopped?

Q. Yes.

A. They all stopped when the officer stopped Mr. Paquette, yes.

Q. They remained there until Officer Moran started with them to the station?

A. Yes.

Q. You remained at the rear and brought up the rear so that Officer Moran went into the station first and you went in after?

A. Yes, sir.

[fol. 39] Q. Inspector, you say the pedestrian traffic was heavy that night at the corner of Chestnut Street and Hanover Street?

A. Yes, sir.

Q. What was the condition of pedestrian traffic between Hanover Street and the police station on the west side of the street, which is the further side from here?

A. There was some travel to and fro. Not so much as at the corner, but there were quite a few there.

Q. Whether or not Officer Moran had any trouble weaving in and around pedestrians in order to get to the station?

A. There wasn't much trouble. No.

Q. You had twenty-five people?

A. The estimate was twenty-five.

Q. What was the motor vehicle traffic at that time?

A. Very heavy at the corner.

Q. Whether or not it isn't a fact traffic was very light on Chestnut Street, pedestrian traffic, while you were going south to the police station?

A. No, I wouldn't call it light. It was the usual Saturday night traffic, which was pretty heavy.

Q. There wasn't a very big crowd, was there? What is the usual Saturday night traffic from Hanover Street south on Chestnut Street?

A. At that time it is very heavy on account of the theatres, the stores being open. They turn left into Hanover Street. There was a lot at that time. That is the way I find it.

Q. What time do the theatres open here for the night performance?

A. Well, they are open all day Saturday.

Q. Anybody going to the theatre can go any time they want?

A. Generally Saturday night you can't go any time you want; it is generally crowded. There is always a line at the Crown whenever I go by there.

Q. Do you want to leave it there was heavy traffic?

A. Heavy traffic, yes.

Q. Now, Sergeant, there has been something said here about the Post Office. Will you give the location of the Post Office, as to where you and Officer Moran were when you stopped the head of this line?

A. We were on the opposite corner from the Post Office, what you would call the south east corner.

Q. You were on the south east corner and the Post Office is on the north east corner of Hanover and Chestnut Streets. Is that right?

A. Yes, sir.

Q. Now, what if you remember—whether or not there is a light at the corner of Hanover and Chestnut Streets?

A. It wasn't lit at that time of the night; it was early evening.

Q. I mean a traffic light?

A. Yes, there is.

Q. What was the condition of this traffic light when these marchers were going by there?

A. I didn't pay any attention.

Q. Now, whether or not, Inspector, there was any traffic [fol. 40] held up there by these marchers, by your stopping the head of the line at Chestnut Street?

A. No.

Q. None whatever?

A. No, sir.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. You say there is a traffic light at Hanover and Chestnut Streets. Whether or not there is at Hanover and Elm?

A. Yes, sir.

Q. Whether or not there is at West Merrimack and Elm?

A. Yes.

Q. Whether or not the stores are open Saturday nights and Thursday nights?

A. Yes.

Q. Are they open other nights?

A. The general run a few stores are.

Mr. Broderick: That is all.

Alex J. Hould, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your name please?

Q. You are an officer of the police department?
A. I am.
Q. Whether or not on Saturday night, July 8th last you were on duty?
A. I was.
Q. Where?
A. Route 16.
Q. Where is route 16?
A. Hanover to Central; Elm to Chestnut.
Q. Whether or not you were on duty at the corner of Market and Elm?
A. I rang at Market and Elm at 7:30.
Q. Where is Market and Elm?
A. Outside the City Hall.
Q. What time did you ring?
A. 7:30.
Q. Whether or not on the night of July 8th you arrested any of these people?
A. I did.
Q. At about what time?
A. It was 7:30.
Q. Where?
A. At Market and Elm, outside the Mayor's office.
Q. How many were in that group?
A. The group was in two sections. There was approximately fifteen in the first group. Then it was broken by pedestrians. There was a gap of a few feet and then ten or fifteen more.
Q. What was the traffic?
A. Pedestrian or vehicular?
Q. Pedestrian.
A. Heavy.
Q. And vehicular?
A. Very heavy also.
Q. Whether or not you talked with the leader of this group?
A. I did.
Q. What was his name?
A. Mr. Arvid Moody.
Q. Are you able to identify Mr. Moody?
A. He is seated directly in back of Mr. Barnard.
Q. This gentleman here?

Q. Was anyone with you that night?
A. I was alone.
Q. Who brought Mr. Moody to the station?
A. I brought him and his force to the station.
Q. Whether or not you inquired from Mr. Moody whether he had a permit?
A. I did.
[fol. 41] Q. What did he say?
A. He told me his leader had taken care of same; he said he didn't have a permit.
Q. When you first approached these people what were they doing?
A. Marching down Elm Street.
Q. They were actually marching?
A. They were actually marching.
Q. Whether or not they were carrying any placards?
A. They were.
Q. Are you able to identify these cards here?
A. Yes.
Q. How many in the group would you say were carrying placards?
A. I would say all were carrying them.
Q. Do you know whether or not they had any handbills?
A. Mr. Moody, the leader, had handbills, but I couldn't say he was giving them out. I didn't see him.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. When did you first see Mr. Moody?
A. As I was going to ring at the City Hall.
Q. Where was he at that time?
A. He was just about opposite the main entrance to the City Hall.
Q. Did you continue to ring?
A. I did not.
Q. You stopped there and stopped him?
A. I stopped Mr. Moody there.
Q. Did you say traffic was heavy?
A. Very heavy.
Q. How were these Witnesses marching?
A. What was that?

Q. How were they marching?

A. In single file.

Q. They were coming toward you?

A. Yes, they were.

Q. How near were they marching together, to the best of your recollection?

A. Very close.

Q. What is your best recollection as to the distance between each of them?

A. I wouldn't say over two feet.

Q. Not over two feet?

A. Not over two or two and one-half.

Q. After you stopped Mr. Moody—you say they were in two sections?

A. Two sections.

Q. While you stopped Moody, did another section come up?

A. The group was broken in two by pedestrians going out to the trolleys. The trolleys were coming south on Elm Street and stopped. Pedestrians went from the City Hall steps through the line, which broke up the parade.

Q. After you stopped Mr. Moody did they come up to you at all?

A. No, they remained in single file.

Q. They remained in single file?

A. Yes.

Q. There was no demonstration of any kind?

A. No, sir.

Q. How long do you recall holding them there?

A. I held them there about three minutes. As I stopped Mr. Moody, Mr. Poulard came down with a man who had been handing out handbills. He asked me to put in a call [fol. 42] for the wagon.

Q. Mr. Poulard came down with this person. Whether or not this person was carrying a banner?

A. I couldn't say. I didn't pay much attention.

Q. Mr. Poulard asked you to call the wagon?

A. Yes.

Q. Did you see the person you called the wagon for?

A. I can't remember. I was too busy.

Q. If he had a banner or sign would you have seen it?

A. I can't recollect if I did or not.

Q. What was the condition of Mr. Poulard at that time—did he have on a shirt or was he in uniform?

A. He was in civilian clothes?
Q. He wasn't in shirt sleeves?
A. No, sir.
Q. Was he wearing a straw hat?
A. I couldn't say.
Q. After you rang the box, what did you do?
A. I conducted Mr. Moody and his group to the station.
Q. You left immediately after ringing the box?
A. Yes.
Q. Whether or not the police wagon came to the box before you left?
A. I couldn't say if it did not.
Q. Was the wagon there when you left with the group you were taking to the station?
A. The wagon was not there.
Q. How did you take them to the station?
A. We crossed Elm from Market to Hanover, south on Elm Street to Manchester Street and east on Manchester street to the station.
Q. Did any other officer go with you?
A. No, sir.
Q. Were you at the head of the line?
A. I was.
Q. You don't know how far the marchers were apart when you were taking them to the station?
A. No, sir, I couldn't see.
Q. Whether or not there was any other officer at that corner at that time besides you and Mr. Poulard?
A. I couldn't say.
Q. Did you see any other officer?
A. I didn't see any other officer, no.
Q. Was any complaint made to you in regard to these people?
A. No, sir.
Q. So far as you are concerned, you stopped them voluntarily?
A. Yes, sir.
Q. Now, officer, whether or not at that time the traffic was interfered with by these marchers?
A. It was.
Q. And where?
A. In front of the City Hall.
Q. Anywhere else?

A. I couldn't swear to that. I didn't see them anywhere except in front of the City Hall.

Q. You think there were twenty-five in that group?

A. Approximately that. There may have been more.

Q. This section which you say was divided up went along with you to the station?

A. Yes, they did.

Q. Whether or not you know—is Officer Poulard in the courtroom?

A. I can't say. I don't see him.

Q. You cannot identify the person Mr. Poulard arrested?

A. I couldn't. No, sir.

[fol. 43] Q. Officer, what was the condition of Elm Street as you reached the corner of Hanover and Elm on the east side and was going down to Manchester Street—what was the condition of traffic?

A. Very heavy.

Q. Was it so heavy you had to weave in and out to get by them?

A. I couldn't swear to that. I know a couple of people stepped aside so we could go through at the corner of Manchester and Elm.

Q. When you turned at Manchester Street, do you know where the rear of the line was?

A. I couldn't say.

Q. You couldn't say it wasn't at the corner of Hanover and Elm, could you?

A. No, sir.

Q. While you were talking with Mr. Moody, where was the rear of the line that Mr. Moody was the head of?

A. To tell the truth I couldn't see because there were too many pedestrians mixed in with them?

Q. Then when you say they were close together, you couldn't tell if they were or not?

A. The broken groups, do you mean?

Q. The group you were taking to the station?

A. I could see the rear then.

Q. Where was the end of that group?

A. When I stopped Mr. Moody at the corner, the tail end of it must have been just about at the main entrance of the City Hall.

Q. So that this group was within a distance of fifty or sixty feet. Is that right?

Q. What is the distance from where you stopped Mr. Moody to the main entrance of the City Hall?

A. Twenty-five or thirty feet.

Q. And all these marchers which you had stopped were in that space?

A. All the marchers I had stopped were in that space, yes.

Q. Whether or not you know where Officer Poulard picked up this man he brought down?

A. I don't know.

Q. Now, you could see the end of the line?

A. I could see the end of the first line when I stopped them.

Q. How about the second line?

A. The second line I couldn't see very well as they drew up because there was quite a crowd around.

Q. How far apart were the two groups?

A. I should say there was about ten feet between the two groups.

Q. About ten feet?

A. Yes.

Q. And you say none of that group came up, none of them gathered around you?

A. No, sir; they stayed single file.

Q. Did you instruct anybody in that group to go to the station except Mr. Moody?

A. No. I told him he had to come to the station and everybody followed him.

Q. But you didn't say anything to the rest of them?

A. I don't recall.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

[fol. 44] Q. You say Inspector Poulard had on civilian clothes. As a matter of fact, what kind of clothes does the inspector wear on his working days? Does he wear a uniform?

A. No, he wears civilian clothes in his work.

Q. Is it possible or is it allowable to turn left on Elm Street from Market, driving east?

A. Do you mean vehicular traffic?

Q. Yes.

A. No, sir.
Q. No traffic is allowed to go north on Elm from Market?
A. No.
Q. Do you know the reason for that?
A. On account of heavy traffic.

Mr. Broderick: That is all.

Recross-examination.

By Mr. Barnard:

Q. You say so far as you know there was no other officer there as you rang the box for Mr. Poulard at his instruction to ring for the wagon—there was no other officer there that you know of?
A. Not to my knowledge.

Mr. Barnard: That is all.

JOHN T. TIERNEY, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your name is John T. Tierney?
A. Yes, sir.
Q. You are a police officer in the City of Manchester?
A. Yes, sir.
Q. Whether or not you were on duty Saturday night, July 8th last?
A. Yes, sir.
Q. Where were you on duty?
A. On Elm Street. Concord to Bridge; Elm to Chestnut.
Q. What time were you on duty at the corner of Concord and Elm Streets?
A. 7:15.
Q. Whether or not you apprehended anybody at that time?
A. Yes, sir, I stopped this procession going north on Elm Street.
Q. What were they doing when you stopped them?
A. They were marching along, single file.

Q. Who was the leader of that group?
A. Mr. Chaplinsky.
Q. Are you able to identify Mr. Chaplinsky?
A. Yes, sir, the gentleman in the brown suit.
Q. Will you stand up, Mr. Chaplinsky?
A. Yes, that is the gentleman.
Q. Did you ask him whether or not he had a permit to parade?
A. I asked him if he had a permit to parade. He said he didn't need one.
Q. After he made that remark what did you do?
A. I told him he would have to come to the station. We went east on Concord Street.
Q. What was the traffic with reference to pedestrians?
A. It was very heavy.
Q. What was the traffic with reference to automobiles?
A. Very heavy.
Q. Whether or not the group carried signs and banners?
[fol. 45] A. Yes.
Q. Are you able to identify them?
A. Yes.
Q. What distance were these marchers from one another?
A. When I stopped them they were about two feet from one another in single file.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. Where did you stop them?
A. At Concord and Elm.
Q. Whereabouts on Concord and Elm?
A. The south side of Concord.
Q. How many were there in that group?
A. I should say twenty to twenty-five.
Q. Where were you when they came along?
A. I was standing at Concord and Elm.
Q. Therefore they were walking toward you?
A. Yes, sir.
Q. Is that right?
A. Yes.
Q. You say they were together, within two or three feet of one another?

A. Approximately.

Q. What did you do or say?

A. Well, I stopped them and asked Mr. Chaplinsky if he had a permit. He said no, he didn't need one.

Q. Then what did you do?

A. I told him he would have to come to the station.

Q. Whether or not you took the other marchers along with you?

A. They followed us right along up through——

Q. Did they follow you to the station?

A. To Amherst and Chestnut Street. I brought Mr. Chaplinsky in; then I returned and they were on the east side of Chestnut Street and I brought them in.

Q. Let's get this right. Mr. Chaplinsky was the only person you took to the station?

A. Yes.

Q. When talking to him did the other marchers come up around you?

A. No, they maintained their column.

Q. Let's see just what you did with Mr. Chaplinsky. Did you go east on Concord Street?

A. I went east on Concord Street. Yes.

Q. To the common?

A. Yes, and through the common.

Q. You cut through the common?

A. Yes, sir.

Q. Where did you leave the other group?

A. At Amherst and Chestnut Street.

Q. At Amherst and Chestnut?

A. Yes.

Q. You went to the station with Mr. Chaplinsky?

A. Yes.

Q. Did the others follow along?

A. No, they stayed there.

Q. After you got to the station with Mr. Chaplinsky what did you do?

A. I brought him in and then came back to Amherst and Chestnut and brought the rest of the detail in. They were crossed to the east side, marching south on Chestnut Street. I left them on the west side of Chestnut and when I got back they were on the east side at about the same place.

Q. Who did you talk with that time?

A. Who did I talk with that time? I said, right straight [fol. 46] to the station. They were ahead and I followed them.

Q. Where were they while you were gone?

A. So far as I know they stayed right around the common there.

Q. Who was in the group that you knew that you took to the station the second time?

A. Who was in the group?

Q. Yes.

A. There were men, women and children in that group.

Q. And how many?

A. Oh, approximately twenty.

Q. Did you get the name of anyone in that group?

A. Just Mr. Chaplinsky.

Q. When you came back and arrested the rest of them?

A. No, I didn't inquire their names.

Q. You came back and said, follow me?

A. That's right.

Q. At that time they were on which side of Chestnut Street?

A. The east side coming south.

Q. On the east side coming south on Chestnut Street?

A. Yes.

Q. You left them at the corner of Amherst and Chestnut on the west side?

A. That's right.

Q. Did you ask them to stay there?

A. They were there whether I asked them to stay or not. They were there on the east side when I got back.

Q. You don't know who was at the head of that line?

A. No.

Q. What time did you take Mr. Chaplinsky to the station?

A. I stopped him at Concord and Elm at 7:15.

Q. Where did you meet the other group—I mean what time?

A. Oh, perhaps five minutes after. 7:20.

Q. You stopped them at the corner of Elm and Concord Street?

A. Yes.

Q. And you took Mr. Chaplinsky and the others followed along across the common?

A. That's right.

Q. To the corner of Amherst and Chestnut?
A. That's right.
Q. Going from Amherst and Chestnut to the station and getting back you think took five minutes?
A. It could be five or ten minutes.
Q. What is your best estimate?
A. I will say between five and ten minutes.
Q. You brought in the second group but you don't know the names of anyone in that second group?
A. No, I didn't take any names.
Q. I understood you to say traffic was heavy?
A. Yes.
Q. Where was it heavy?
A. It was exceptionally heavy at Concord and Elm Streets.
Q. How many people do you think were there at that time?
A. On Elm Street the people were lined up against the curb and against the windows of Grant's as these people were passing by.
Q. Just where did you stop them?
A. At the corner.
Q. What you did congregated a crowd?
A. No, they had broken away so these people could get through.
Q. Who broke away?
A. The pedestrians.
Q. Did you have any trouble seeing the end of the line?
[fol. 47] A. Not after they stopped.
Q. You said they had banners?
A. Yes, I could see banners.
Q. Could you see clear to the end of the line you stopped?
A. Yes, because the people had all gotten to one side.
Q. All right. How far down Elm Street were they?
A. They were down Elm Street just below the end of the Bond Bldg.
Q. That is approximately how many feet?
A. Oh, I should say sixty feet.
Q. And how many people do you think were stopped by virtue—because you had stopped this line of marchers, how many people do you think were there at that time?
A. In that space of sixty feet?
Q. Yes.

A. I should say two hundred or two hundred and fifty.
Q. You walked to the station with Mr. Chaplinsky?
A. Yes.
Q. Did you have any trouble with pedestrians?
A. No, the pedestrians stepped to one side.
Q. How many do you think you passed until you got to the corner of Vine Street?
A. Oh, I don't know just how many. There weren't as many as there were on Elm Street.
Q. You had no trouble, you didn't have to weave in and out?
A. No, people stepped aside as we were approaching.
Q. Can't you give an estimate of how many people were between Elm Street and Vine Street, or on Vine Street, as you went into the common?
A. Approximately?
Q. Yes, approximately.
A. Oh, around fifty or sixty perhaps.
Q. When you crossed the common you crossed diagonally?
A. Yes.
Q. That is the common in front of the fire station?
A. Yes.
Q. How many people do you think you passed going through the common?
A. Oh, ten or fifteen in the common itself.
Q. You never said anything to the others in the line of march there except Mr. Chaplinsky, you just talked to Mr. Chaplinsky and took him to the station?
A. I did all my talking with Mr. Chaplinsky.
Q. How was the weather that night, hot?
A. Not terribly hot.
Q. Did you see Officer Poulard?
A. No, I didn't. No.
Q. Now, Officer, you are positive that the second line of marchers were the ones who were in line when you took Mr. Chaplinsky out of it?
A. Yes, sir.
Q. How do you know that if you can't identify any of them?
A. Well, Mr. Chaplinsky took his banner off and handed it to this man, and this man carried it under his arm.
Q. What did he say to him—anything?
A. I don't remember what he said.
Q. Do you remember him saying "Go up Pearl Street"?

A. No, sir.

Q. Did you look around after you started with Mr. Chaplinsky to see whether or not the other marchers had gone on?

[fol. 48] A. No, I didn't.

Q. Still you are positive you can identify the last group you picked up as the same group Mr. Chaplinsky was in?

A. The man who was carrying the banner which Mr. Chaplinsky had was coming along in this outfit which I met on my return.

Q. Can you identify him?

A. I don't know if I can or not.

Q. When you saw them marching, that is the second group you went out and picked up, you picked them up on the opposite side of Chestnut Street. How near were they together when you first saw them?

A. They were coming south on Chestnut Street in regular marching order.

Q. Where was the head of the line when you first saw them?

A. They were just crossing Amherst Street.

Q. Amherst Street. Where was the rear of the line?

A. Well, it went back into the common on Chestnut Street.

Q. How far back in the common?

A. Oh, I should say sixty or seventy feet back.

Q. The traffic wasn't heavy enough so but what you could see from the head of the line to the rear of the line?

A. Not on Chestnut Street.

Q. You think they were back sixty feet?

A. Yes, sir.

Q. That would be on the north side or the south side of Amherst Street?

A. The south side of Amherst Street.

Q. The traffic wasn't heavy at all on Chestnut Street, was it, between Concord and Amherst?

A. Wasn't heavy?

Q. Yes.

A. I will say it wasn't as heavy as on Elm Street or the side streets, but there were people walking up and down Chestnut Street there.

Q. When you came back and picked them up, how many pedestrians do you think were on the side of the street on which the marchers were when you picked them up?

A. I couldn't say that.

Q. Do you know if there were ten, or two or five or more?
A. In what distance? What do you mean, right where the marchers were?
Q. Where the marchers were?
A. In the line of march I would say fifteen or twenty people stepped aside.
Q. How many people were back of them—many?
A. I couldn't say.
Q. This second group, you don't know where they went?
A. No, I don't know.
Q. How near were they to the place—when you left Mr. Chaplinsky and left them there, how near were they to the place where you picked them up?
A. When I went away with Mr. Chaplinsky?
Q. Yes.
A. How near?
Q. Yes.
A. They were just across the street.
Q. When you left with Mr. Chaplinsky, they were on the west side of Chestnut Street and when you came back they [fol. 49] were on the east side on Amherst Street?
A. Yes, just across Amherst.

Mr. Barnard: That is all.

Redirect Examination.

By Mr. Broderick:

Q. Is it so all you could do is take Mr. Chaplinsky to the station and turn him over to your superior officer?
A. Yes.
Q. How much time did you spend with Mr. Chaplinsky?
A. I just walked to the station, turned him over and came right out.
Q. You walked to the station, turned him over and came right out?
A. Yes.
Q. Did you attempt to make any mental notation as to how many pedestrians were walking on the streets on that Saturday night?
A. No.

Mr. Broderick: That is all.

Recross.

By Mr. Barnard:

Q. Didn't I understand you took the second group to the station after you took Mr. Chaplinsky?

A. I took Mr. Chaplinsky; then I returned and got the group coming on Chestnut Street.

Q. You took them to the station also?

A. Yes.

Q. What did you do with them when you got them over there?

A. I did the same thing, I turned them over.

Q. And you cannot identify anyone in that second group?

A. No.

Mr. Barnard: That is all.

Further Redirect.

By Mr. Broderick:

Q. What your superior officer did with the second group is something you know nothing about?

A. Yes, sir.

Further Recross.

By Mr. Barnard:

Q. How many were in the second group?

A. Oh, twenty or twenty-five.

Q. Twenty or twenty-five?

A. Yes, sir.

Mr. Barnard: That is all.

JOHN H. HICKEY, sworn by Mr. Broderick.

Direct Examination.

By Mr. Broderick:

Q. What is your name, please?

A. John H. Hickey.

Q. You are a police officer in the City of Manchester?

A. Yes, sir.

Q. Whether or not you were on duty July 8th last?

A. Yes, sir.

Q. And were you on duty at the corner of West Merrimack and Elm Streets?

A. Yes, sir.

Q. Whether or not you apprehended a group of Jehovah Witnesses on that night?

A. I did.

Q. And where?

A. On the north corner of West Merrimack and Elm Street.

Q. How many were in that group?

A. I didn't count them. I would say forty to fifty.

Q. Who was the leader?

A. Mr. Cox, W. H. Cox. I asked if he had a permit. He said no. He said something about a talk with Capt. Tenney. [fol. 50] Then he said he didn't need any. He took out a book and showed me something about the Supreme Court.

Q. Can you identify Mr. Cox?

A. This man in the grey suit.

Q. Whether or not they were carrying signs and banners?

A. They were all carrying signs and banners or signs on their backs.

Q. How was the traffic?

A. As I approached north on Elm Street I see Officer Ahern crossing from the east to the west. I see this group weaving their way through the crowd. I crossed the street. Mr. Cox was the first man I met. I told Officer Ahern to step up to the rear. I had to stop the traffic and we went over and down to Chestnut Street to the station.

Q. What do you mean by weaving in?

A. There was people coming along on Elm Street. The sidewalk was full, and they weaved in between them that was at the northwest corner of Merrimack and Elm, right in front of the fruit store.

Q. Whether or not you escorted them to the station?

A. Yes, I escorted them to the station.

Q. What distance would you say they were marching from each other?

A. Right close, two or three feet, following each other right along.

Q. In single formation?

A. Yes, sir.

Q. On the sidewalk?

A. Yes, sir.

Q. Did you know Mr. Cox prior to this arrest?

A. I talked with him once before, two or three years ago. I haven't seen him since.

Q. After you approached Mr. Cox, whether or not the paraders gathered about?

A. There really wasn't much room to congregate. The parade come down the middle that had opened up to let them through, and they really filled the sidewalk.

Q. After you stopped them was there more of a crowd gathered?

A. After I stopped them there was some remarks from the crowd.

Q. Did the paraders come from the other side of the street over there?

A. No.

Q. What time would you say that was?

A. It was 7:40 when I held them up.

Q. Do you recall, Officer, whether or not Mr. Cox carried a banner?

A. Yes, Mr. Cox had a placard in front and in back.

Q. Do you recall whether or not he wore a coat?

A. I don't think he did. I am not sure, but I don't think he did.

Q. What would you say the traffic condition was from Elm Street east on Merrimack to Chestnut Street?

A. It was not so bad there.

Q. It was not so bad there?

A. No.

Mr. Broderick: You may inquire.

[fol. 51] Cross-examination.

By Mr. Barnard:

Q. How did you happen to pick out Mr. Cox as the head of this group?

A. Well, he was walking north on Elm and I was walking south and we just come together first.

Q. Whether or not you passed one of the marchers before you came to Mr. Cox?

A. Mr. Cox was the first one in line, I say. I walked right up to him.

Q. You and Mr. Cox were the first two going to the station?

A. Yes.

Q. You say traffic was heavy?

A. It was on Elm Street but not on the way to the station; that is, from Elm to Chestnut and from Merrimack to the station I wouldn't call the traffic heavy. There was a few we did meet, but they would step out of the way.

Q. Approximately how many people would you say there was from Merrimack and Elm to Chestnut Street that you passed?

A. Not very many.

Q. Were there any ahead of you?

A. There was a fellow with a camera who snapped our picture up by the Rice-Varick.

Q. Who was that, do you know?

A. I don't know who he was. This fellow didn't seem to be in the gang. He didn't have anything only just the camera.

Q. Which side of Elm Street were you on—were you proceeding north on Elm Street?

A. When I met the parade I was on the west side of Elm Street. I had just crossed West Merrimack when I met Mr. Cox.

Q. Did anybody go by you as you crossed Merrimack Street with a banner of any kind?

A. No.

Q. How long were you at the corner with Mr. Cox?

A. Very shortly. Probably a minute.

Q. Whether or not you could see the rear end of the group?

A. No, I couldn't see the rear end of the group.

Q. Where was the rear end of the group to the best of your knowledge?

A. I could see a straight line as far as McQuade's Store; beyond that I couldn't see any more.

Q. You say they were walking as close as two feet together?

A. The same as any march would be, probably two, two and a half or three feet.

Q. How were they marching?

A. Single file.

Q. You had no trouble seeing these banners up the street?

A. No. You could see a row of banners above their heads.

Q. McQuade's Store is how far from the corner of West Merrimack and Elm Streets?

A. Probably seventy yards.

Q. That would be two hundred some odd feet?

A. About that. I never measured it. I don't know.

Q. You say how many were in that group?

A. I would say between forty and fifty.

Q. Did you count them?

A. No, I didn't.

Q. What makes you say——

[fol. 52] A. Just guesswork. You can count ten and measure the rest. When I got to the corner of Chestnut Street the tail end was at the Rice-Varick Hotel. As we went in the door of the police station, the tail end hadn't made the corner. They were still coming up Merrimack Street.

Q. They were more than two or three feet apart then?

A. I don't know about coming up, but when I stopped them they were two or three feet apart.

Q. Where did Officer Ahern come from?

A. He crossed the street when he see them coming down.

Q. Where was he on Elm Street?

A. He was practically across the street. I watched him coming across. When the marchers come along he was stepping up on the curbing so we were practically there together.

Q. What instructions did you give Officer Ahern?

A. I asked if he would follow in behind them.

Q. So the instructions you gave Officer Ahern was to come in behind the marchers?

A. Yes, sir.

Q. You also say when you got to the station door the line of march was still coming up West Merrimack Street?

A. Still coming up Merrimack Street.

Q. Still coming up Merrimack Street. They hadn't made the turn?

A. No.

Q. By the way, which side of Merrimack Street did you come up on?

A. On the north side.

Q. Approximately how far is the corner of Chestnut and Merrimack Street from the police station?

A. It is just a black between Manchester Street and Merrimack Street. I don't know what you would call it, sixty or seventy yards, sixty-five yards.

Q. After you brought them to the station you didn't question them?

A. No, sir.

Q. When you got them to the station who did you turn them over to?

A. I brought them to the station. When they got to the lieutenant's office, the lieutenant told me to carry them upstairs to the inspectors' office.

Q. You didn't count them?

A. No, sir.

Q. Who was in the march?

A. Where?

Q. When you were taking them from the corner of West Merrimack Street to the station who was in the line?

A. I couldn't tell you anybody but Mr. Cox.

Q. Was there any women there?

A. Yes, women and children I would say.

Q. How long were you stopped at the corner of West Merrimack and Elm Street talking to Mr. Cox?

A. Not over two minutes.

Q. Whether or not the marchers came up and congregated around you?

A. No, sir.

Q. They stayed in single line?

A. They stayed in formation.

Q. When you started they followed?

A. They followed.

Q. You asked Officer Ahern to bring up the rear?

[fol. 53] A. Yes.

Q. Whether or not you saw any other officer there besides Officer Ahern, any other police officer besides Officer Ahern?

A. The only other one I see was Officer Hould. I don't know where he came from.

Q. That was at the station?

A. Yes.

Q. But at Merrimack and Elm Street?

A. Officer Ahern is the only one I see.

Q. You say Officer Ahern was coming across Elm Street from east to west, and he was at the corner of Merrimack and Elm Street?

A. Yes.

Q. You hadn't seen him come down Elm Street?

A. I see him crossing the street.

Q. At the cross walk?

A. Yes.

Q. There is a traffic light?

A. Yes.

Q. You saw him cross over toward you at that cross light?

A. He wasn't crossing to me; he was crossing to the other corner.

Q. You were at the corner of West Merrimack and Elm Street at the fruit store?

A. No. I was at the southwest corner. Officer Ahern was going to the northwest corner as I was coming up.

Q. Was he on the same side of Elm Street as you?

A. He would be by the time I got there.

Q. He was crossing Merrimack Street?

A. No, he didn't cross Merrimack Street.

Q. He was crossing Elm Street?

A. Yes.

Q. From what location did you see him crossing Elm Street?

A. He was probably twelve feet from the curb when I noticed him. I was stepping off the curb at West Merrimack Street.

Q. Going north?

A. Yes.

Q. He was about twelve feet from the curb of Elm Street?

A. When I noticed him.

Q. You don't know if he came from the other side or came down Elm Street?

A. The way I was watching him he was coming west across Elm.

Q. Was that his beat?

A. I believe his beat is across the road. I don't know what beat he was on.

Q. What was your beat that night?

A. West Central to Market Street on the west side of Elm.

Q. West Central to Market Street on the west side of Elm?

A. Yes, sir.

Q. Officer, for the purpose of identification I would like to have you look and see if this is a picture of you, as the officer in police clothing?

A. I think it is.

Q. And who is that with you?

A. That is Mr. Cox I believe. I can't see it so good to see his face but it looks the way he looked that night.

Q. From the location shown there where was that picture taken?

A. There is only one place I see a picture taken. That was by the Rice-Varick Hotel on West Merrimack Street. If this is it I don't know.

Q. Is there anything there as to buildings or the street or any marks to show about where you were when that pic-
[fol. 54] ture was taken?

A. The only other place it could be taken was on Chestnut Street near the police station. I don't know any other place.

Q. What building is on the left of that picture? Isn't that the corner of Elm and West Merrimack?

A. I don't see any corner there.

Q. I am talking about the building.

A. If that building is on the corner of West Merrimack and Elm Street we was down south of it.

Q. Directly over Mr. Cox' head whether or not there is a traffic light there?

A. That was taken right near Jimmie Hill's on Merrimack Street. That is a traffic light on the corner of Merrimack and Elm Street. We are going east on Merrimack Street.

Q. That was taken on Merrimack Street?

A. Yes.

Q. By Hill's store?

A. Yes, by Hill's store. Yes.

Q. Directly in front of you is a Witness that is parading?

A. There is no witness there.

Q. That is your picture?

A. Yes.

Q. Directly in front of you there is a Witness that is parading?

A. There was no parading down Merrimack Street, I know that.

Q. I am asking you if there isn't one of the Witnesses marching ahead of you and Mr. Cox that shows in that picture?

A. It was in the picture. Yes.

Q. You don't deny but what that is your picture?

A. No, I don't.

Q. You don't question but what that is Mr. Cox?
A. No.
Q. This Witness has a sign that says Fascism of Freedom, this man in front of you?
A. If that picture was taken on Merrimack Street, I didn't hold up Mr. Cox there. I held him up on Elm Street.
Q. You identify this as Hill's store?
A. Yes.
Q. You identify that as the traffic light on Merrimack and Elm Street?
A. Yes.
Q. You identify that as Mr. Cox and you?
A. Yes.
Q. Here is a man carrying a banner in front of you?
A. I don't know where he came from. He wasn't at the head of the line when I stopped them.
Q. From that picture, what about pedestrian traffic?
A. I told you there was light traffic on Merrimack Street. There was a few after that that stepped aside.
Q. On the picture it shows there was a few lined up against a building?
A. Not many; there is very few.

Mr. Barnard: I ask this picture be marked as Defendant's A for identification.

Q. Now, Officer, you say when you stopped Mr. Cox he was the first man in line, and therefore that was the corner of Elm and West Merrimack Street, on the west side of Elm Street opposite the fruit store?
A. In front of the fruit store.
Q. You were there with him about two minutes?
[fol. 55] A. Yes.
Q. The next you saw was Officer Ahern coming down?
A. I see Officer Ahern before I see Mr. Cox.
Q. You saw Officer Ahern before you saw Mr. Cox?
A. Yes, before I noticed him.
Q. So that Officer Ahern got there before you did?
A. Practically about the same time; probably ten or fifteen seconds sooner.
Q. Officer Ahern wasn't there before the marchers?
A. He got there about the same time.
Q. After you stopped Mr. Cox, which was for about two minutes, then you suggested to him what?

A. I suggested that we go to the station and straighten it out.

Q. You went with him?

A. Yes, sir.

Q. I would like to show you another picture. See if you can identify yourself in that?

A. I believe that is it.

Q. Who is with you?

A. Mr. Cox.

Q. Where were you and Mr. Cox when that picture was taken?

A. Near the park somewhere I believe.

Q. Can't you tell from the picture where you were?

A. Crossing Elm Street.

Q. Crossing Elm Street?

A. I think so.

Q. There are certain lines down the center of the track—down the center of the street. What do you think those lines were if that is Elm Street?

A. Don't you call it car tracks?

Q. All right. Which side of the car tracks were you and Mr. Cox on?

A. The west side.

Q. That was taken then in the center of Elm Street?

Mr. Broderick: May I inquire in regard to the purpose of these pictures?

Mr. Barnard: There has been testimony the people were marching two or three feet apart. It is to show they were not marching two or three feet apart.

Mr. Broderick: At the time the picture was taken?

Mr. Barnard: At the time the picture was taken and the officer has identified himself and Mr. Cox with sign attached.

(No answer.)

Q. There is a man directly ahead of you?

A. Yes.

Q. He is between the car tracks?

A. Yes.

Q. You would say that picture is taken looking down Elm Street toward the common. Is that right?

A. That is right.

Q. Do you know how far the west rail of the south bound electric car is from the west side of Elm Street?

A. I don't know exactly. I should say probably thirty feet or twenty-five feet.

Q. Now, Mr. Hickey, will you look at that picture. How far do you think this man is ahead of you?

A. Well the width of the car tracks and a half, I would say.

Q. Now, how far are you and Mr. Cox from the west line of Elm Street?

A. From the curb, do you mean?

Q. No, from where you and Mr. Cox are to the curb?

[fol. 56] A. Maybe twenty feet, twenty-five feet. About that.

Q. So that when you were taking them to the station the marchers were ten or fifteen feet apart from you—there were no other marchers there when you were taking Mr. Cox to the station?

A. I don't know. I didn't look behind. When I started out with Mr. Cox I didn't look around.

Q. But that is you in the picture?

A. Yes.

Q. You don't dispute that?

A. No.

Mr. Barnard: I offer this picture as Defendant's Exhibit B, for identification.

Q. I show you another picture. I ask if you can tell who the officer is with the Witness marching?

A. It looks like Officer Ahern.

Q. Officer Ahern is the officer who came to the corner of West Merrimack and Elm Street, where you were, before taking the Witnesses to the station?

A. Yes.

Q. What was the traffic on Merrimack Street?

A. The traffic was not heavy on Merrimack Street.

Q. That is a well travelled highway in Manchester?

A. There was very little traffic on Merrimack Street that night.

Q. Whether or not you can tell where that picture was taken?

A. At the corner of Merrimack Street and Chestnut Street I believe.

Q. At the corner of Merrimack and Chestnut?

A. Yes.

Q. Does it show any traffic at all on Chestnut Street?

A. I can't see none here on it.

Q. Now, Officer, what was the time you arrested Mr. Cox and this group?

A. About 7:40 P. M.

Q. Do you make any record when you make an arrest?

A. Well, we put it in our notes and keep it in our diary.

Q. Have you your diary here?

A. No, sir.

Q. Do you put it down at the time you make the arrest? Whether or not you put down the time you make arrests?

A. Yes, sir, about the time we make it.

Q. Will you produce here your records showing the time you made that arrest as put in your diary?

A. I will look up my diary.

Q. Whether or not you compare your diary with the records you make at the station?

A. There is a difference in time. I put down the time I hold them up and there is a difference in the time they are booked at the station. Ordinarily we go by the time at the station, whatever time he is booked.

Q. Your recollection is it was about 7.40?

A. Yes, sir, about 7.40. It was 7.45 when I got into the station and looked at my watch.

Q. It was 7.45 when you got to the station?

A. Yes, sir.

Q. You made a record to that effect?

A. I made a note of it in my diary.

Q. Do you know whether or not the police have a record of it?

A. I don't know. I have got a note here on it, it was 7.45.

[fol. 57] Q. What does your note say as to the time you arrested him?

A. It was about 7.40 I held them up at West Merrimack and Elm and it was 7.45 when I got into the station.

Q. When you got into the station?

A. Yes, sir; we went directly up there.

Q. After you got to the station, whether or not Mr. Ahern came in there with you or came in after you?

A. I don't believe Officer Ahern came in the station.

Q. You didn't see him?

A. Not after I left him at Merrimack and Elm Street.

Q. I understand you say the person in charge of the station asked you to take them to another room outside the lieutenants room?

A. Yes.

Q. You didn't see Officer Ahern again that evening?

A. Not after I left West Merrimack and Elm.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. You testified on several occasions that traffic on Merrimack Street between Elm and Chestnut was not heavy. Are there any stores there?

A. There is a barber shop and a hotel and a tailor shop. The typewriter place is not open.

Q. What is on the south side of the street?

A. An open common.

Q. Did you see anybody snapping pictures on Elm Street?

A. I didn't see anybody snapping pictures on Elm Street but I did on Merrimack Street.

Q. You say the traffic on Merrimack Street was not heavy?

A. No. Those pictures were taken after I held up the parade.

Q. When you first apprehended Mr. Cox is there any doubt in your mind who was leading that parade?

A. Not a bit. I was going north. He was going south. We met face to face. He was the first one in the line.

Q. Can you give any reason why someone should be walking in front of Mr. Cox?

A. I went out and held up the traffic. I was busy. The place was jammed with automobiles. In my mind I was trying to get them across the street without holding traffic up too long. I wasn't paying any attention to the taking of pictures..

Q. That is your picture?

A. Yes.

Q. That is Mr. Cox?

A. Yes.

Q. He is wearing no coat?

A. No.

Q. Can you read that sign?
A. It says something about Fascism.
Q. Fascism or Freedom?
A. Yes.
Q. Is that your picture?
A. Yes.
Q. Is that Mr. Cox?
A. It is. Who the other man is I don't know.
Q. Can you tell where this picture was taken?
A. Crossing Elm Street from the north side at West Merrimack St.
Q. I am pointing to an automobile vehicle and ask you [fol. 58] whether or not there is any congestion there with reference to that picture?
A. Yes. There is a car parked there.

Mr. Barnard: What is that?
Mr. Broderick: That is Defendant's Exhibit B for identification. Do you want the jury to see them?
Mr. Barnard: Yes.
The Court: Are there three offered in evidence?
Mr. Barnard: They are marked for identification.
Mr. Broderick: The state offers them now as exhibits and introduces them. They are marked Defendant's Exhibits A, B and C.
Mr. Barnard: May I show them to the jury?
The Court: Yes.

Q. These pictures were taken after the arrest? That is true?
A. Yes, that is true.
Q. The respondent was apprehended on Elm Street and not on Merrimack Street?
A. No.
Q. There is nothing in the picture indicating any sort of parade is there?
A. Not a thing.
Q. Do you know what happened to the rest of them?
A. I didn't look behind after I once started up.
Q. You simply took the leader to the station?
A. I simply took the leader to the station, the two of us walking along together.
Q. After you took them to the station, you turned them over to your superiors and went back to your duties?
A. Yes.

Mr. Broderick: That is all.

Recross-examination.

By Mr. Barnard:

Q. Officer, you don't know how far apart they followed you up Elm St.?
A. I didn't pay any attention after that.

Redirect.

By Mr. Broderick:

Q. The parade was broken up after that? When they took the pictures?
A. It looks like it.

Recross.

By Mr. Barnard:

Q. Do you mean it was broken up?
A. So far as I was concerned it was.
Q. How did they go, in twos, three and fours?
A. They come along behind me.
Q. In single file?
A. I suppose so.
Q. Officer Ahern was in back of you?
A. Yes.
Q. You asked him to come up with the rear?
A. Yes.

Redirect.

By Mr. Broderick:

Q. Can you show me any members of the Jehovah group marching behind you in this picture?
A. No, sir.
Q. Can you show me where there is any respondent walking behind that individual?
A. No, sir.
Q. Can you show me any walking behind that individual in this picture?
A. No, sir.

Q. Therefore the parade was broken up at that time?
A. Yes, sir.

Mr. Broderick: That is all.

Recross.

By Mr. Barnard:

Q. What you just answered to is Defendant's Exhibit B [fol. 59] and also Exhibit, Defendant's Exhibit C?
A. Yes.
Q. Now, whether or not there are any in Defendant's Exhibit A—whether or not there is any indication of others in that picture following you up?
A. I can't see any.
Q. With banners?
A. I can't see any.
Q. What are those directly back there? Are those signs or what are they?
A. I can't tell you what they are, but I can't see any persons there or any parts of persons.
Q. You can see over the top of the banners?
A. I can see a little black spot. I don't know what it is.
Q. You can see this banner?
A. That is ahead.
Q. He is marching ahead of you?
A. I didn't see him, but he is according to the picture.
Q. You can see in Defendant's Exhibit B, you can see one marching ahead of you and Mr. Cox marching across Elm Street?
A. I don't know who it is, sir.
Q. But there is a person there marching ahead of you?
A. Yes, sir.

Mr. Barnard: I think that is all.

Redirect by Mr. Broderick:

Q. Officer Hickey, in Defendant's Exhibit C can you see any member of that organization walking in back of that individual?
A. An officer.

Mr. Broderick: May I again show this to the jury?
The Court: All right.

Q. In Defendant's Exhibit A can you see any members of this organization walking in back of Mr. Cox?

A. No, sir.

Q. In Defendant's Exhibit B can you see any individuals walking in back of Mr. Cox?

A. No, sir.

Mr. Broderick: That is all.

Recross by Mr. Barnard:

Q. Officer, as I remember you testified you took forty, about forty of these marchers to the station?

A. Yes, sir.

Q. Now, how many went into the station with you when you went in with Mr. Cox?

A. They all come along in line going in the station.

Q. Yes. Now, if they came in line they must have been in back of Mr. Cox when you went up Merrimack Street?

A. I suppose they was but I couldn't see them.

Q. You know as a matter of fact that they did go to the station behind you?

A. Yes.

Q. So you know when the picture was taken they were in back of you?

A. I can't see them in the picture.

Q. No, but you know of your own knowledge they were, because they went in the station with you and Mr. Cox?

A. Yes.

Q. You think there was about forty of them?

A. Yes.

Q. They didn't come out of the air and follow you in?

A. No.

Q. They didn't come out of the air when you went in, the [fol. 60] other marchers were right there?

A. Yes.

Q. Several of them?

A. Yes.

Q. They were in the station when you made your report to the officer in charge?

A. Yes.

Q. He told you to take them upstairs?

A. Yes.

Q. So they must have been behind Mr. Cox when you were coming up Merrimack Street?

A. That is where I suppose they were.

Q. You know it, don't you?

A. I am not sure of it; the picture doesn't show them.

Q. As I remember, you testified and if I am wrong you can correct me, when you went in the station with Mr. Cox you could see the rear of the line?

A. Yes.

Q. They were still parading up Merrimack Street?

A. Yes.

Q. Marching up Merrimack Street when you went into the station?

A. Yes.

Q. So they couldn't have been far behind Mr. Cox, when you could see them coming up Merrimack Street by the church?

A. Yes.

Q. When you were going into the station?

A. Yes.

Q. So as a matter of fact, they were behind you in the picture of you and Mr. Cox?

A. They were supposed to be. I can't say I looked and see them.

Q. You saw them when they were going into the station?

A. I saw them when they were going into the station, yes.

Q. When you were going into the station you saw the line coming up Merrimack Street?

A. Yes.

Q. So they were behind you and Mr. Cox when the picture was taken. Isn't that a fact?

A. I see a man taking pictures. I didn't look behind me to see where the gang was, but when I got to the police station they were right behind me.

Mr. Barnard: That is all.

Redirect.

By Mr. Broderick:

Q. But those pictures were taken after the arrest?

A. Those pictures were taken after the arrest, yes.

Mr. Broderick: That is all.

FRANCIS B. KENNEY, sworn by Arthur S. Healy, Clerk of Court.

Direct examination.

By Mr. Broderick:

Q. Your full name, please?
A. Francis B. Kenney.
Q. You are surveyor of highways for the City of Manchester, are you not?
A. Yes, sir.
Q. Whether or not as surveyor you have jurisdiction to issue permits and licenses for the purposes of parades?
A. Yes, I do.
Q. Whether or not permission or a permit was issued to the Witnesses of Jehovah under date of July 8th, or at any time prior or subsequent to that time by you as commissioner?
A. There was not any issued.
Q. Surveyor, whether or not you can tell us the purpose [fol. 61] of the traffic light at the corner of Elm and Market Streets—whether or not traffic can go north on Elm Street from Market Street?
A. It cannot. There is only righthand traffic.
Q. Can you give us any reason for that, as surveyor?
A. To relieve the congestion at that point.
Q. Whether or not that particular area is congested on Saturday nights?
A. It is.
Q. Would you say it was more so congested on Saturday nights than on any other nights of the week?
A. Either Saturday or Thursday, there isn't much difference, but we have notes showing during one hours time twenty-six thousand people have passed that intersection at the corner of Hanover and Elm.

Mr. Broderick: You may inquire.

Cross examination.

By Mr. Barnard:

Q. Mr. Surveyor, have you made the statement as to what conditions of traffic were, or the number which passed that location which you testified to, on July 8th, 1939?

A. I couldn't answer that.

Q. Therefore you don't know if there was a lot of traffic there or no traffic there?

A. No, sir.

Q. The reason the light was put in there was to help general traffic every day of the year?

A. That's right.

Q. Therefore it wasn't for the special congestion of the 8th, or of any other time, that the light was put there?

A. No, sir.

Q. Did you superintend the putting in of lights in different parts of the city?

A. I have some of them.

Q. They were put in for the benefit not only of pedestrians but of automobiles?

A. Yes.

Q. Vehicular traffic?

A. Yes, sir.

Q. Did you say you issued a permit to these people to march?

A. I did not issue a permit.

Q. Whether or not they made an application for one?

A. They did make an application for one.

Q. Was it issued?

A. No, sir, it wasn't issued.

Q. Why wasn't it issued?

Mr. Broderick: I ask the Court's ruling.

The Court: Does it make any difference?

Mr. Barnard: He said they asked for a permit. I asked if it was issued and he said it wasn't.

Q. Why was it not issued?

The Court: That is the question Mr. Broderick objected to. I don't see as it makes any difference. There is no provision in the statute for an appeal. He is the court of last jurisdiction on this thing. If you want to attack his judgment, you have got to do it in a direct action.

Mr. Barnard: It shows—the position of the defendants is that so far as it applies to them it is an arbitrary use of his power, the fact he granted it or didn't.

[fol. 62] The Court: You can't go into the findings of the Commissioner of Motor Vehicles, or the findings of anybody else. If they have jurisdiction you can't attack it as a collateral case.

Mr. Barnard: In this particular case this Surveyor acted for the City of Manchester. He is the person to whom applications are made.

The Court: He isn't obliged to issue one.

Mr. Barnard: If use can be shown to be reasonable, if you are going to set him up as an individual who shall say who shall have a permit and who shall not, you are denying these people their constitutional rights.

The Court: It is the same as the Motor Vehicle Commissioner or the Insurance Commissioner or anyone else who issues licenses.

Mr. Barnard: We say he is violating his power.

The Court: You can go into court with that, but you can't make it a collateral issue in another case. You can't arrest a man for driving without a license and come in and say the reason why the Motor Vehicle Commissioner wouldn't give him one. You wouldn't get to first base. He is appointed by the City Government, and has the power to investigate and grant licenses. He has decided the question and that is the end of it.

Mr. Barnard: If that is the setup, we would like to save an exception.

Mr. Broderick: Here is what the evidence will disclose. These people applied for a license. He told them to come back, and they never came back. I am willing to go into it if you think we should.

The Court: I don't care.

Mr. Barnard: It is the position of the defendants they didn't make application.

The Court: Then if they didn't make application they certainly wouldn't get a license. Who says that, your fellow?

Mr. Barnard: Sure.

The Court: Well then they certainly wouldn't get a license.

Mr. Barnard: Our position is they are not obliged to have a permit.

The Court: Then why ask this fellow why he didn't give him one?

Mr. Barnard: They issued an application to the surveyor for a permit to operate a sound truck. We will save our exception.

Mr. Broderick: No more questions.

Mr. Barnard: No more questions.

Mr. Broderick: It has been agreed, Your Honor, by counsel that the respondents had been carrying signs, that they were taken from the respondents at the station, that the respondents admit carrying the signs. For the purpose [fol. 63] of the record we desire to have these marked now: Signs attached to sticks, State's Exhibit #1, sandwich signs, State's Exhibit #2.

Mr. Barnard: I believe Mr. Kenney was Brother Broderick's witness when we concluded yesterday.

Mr. Broderick: No questions.

Mr. Kenney on the stand.

Cross-examination.

By Mr. Barnard:

Q. I understood you said the respondents did not make a request to you and an application. Whether or not you investigated the application?

A. Yes, sir I did.

Q. What were the conclusions you came to?

A. I didn't come to any conclusion.

Q. After your investigation you didn't come to any conclusion?

A. We didn't come to any conclusion because they never came back to see about their application.

Q. And you never issued a permit?

A. No, sir.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. You say you never issued a permit because these people never came back to inquire whether you would or would not issue a permit?

A. Yes, sir.

Mr. Broderick: That is all.

MARTIN E. SULLIVAN, sworn by Mr. Broderick.

Direct examination.

By Mr. Broderick:

Q. Your full name please?
A. Martin E. Sullivan.
Q. You are police inspector?
A. Yes, sir.
Q. In the city of Manchester. Whether or not you were on duty July 8th last?
A. Yes, sir.
Q. At the station?
A. Yes, sir.
Q. Whether or not you were at the station when the respondents were brought in on that night?
A. Well, I came in within a few minutes after the first group came in.
Q. Did you talk with the respondents now on trial?
A. Yes, sir.
Q. Whether or not these respondents admitted to you on that night that they paraded?
A. Yes, sir, they did.
Q. Whether or not they admitted they paraded without a license?
A. Yes, sir.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. Inspector, whether or not you talked with each respondent separately?
A. In the presence of Inspector Suosso and Inspector Kelly I talked with them.
Q. Whether or not you made any notes of what the respondents said at that time?
A. Yes, sir, we did.
Q. Have you the notes?
A. No, sir, not the original notes.
Q. Where are the original notes, if you know?

[fol. 64] A. Well, we used the original notes in making out the typewritten sheets Inspector Suosso read on the typewriter.

Q. Then what happened to the original notes you had taken in the presence of the respondents?

A. I believe they were destroyed. Mr. Suosso had them. We sat there. He went over our notes with us. I really couldn't say whether he destroyed them or threw them away or what he did with them.

Q. Who took the original notes?

A. At times I would question the witnesses and Suosso and Kelly would write. At times we took turns writing and questioning.

Q. Now the original notes you took, where are they?

A. We used them in making up the typewritten sheet, as we call it.

Q. Then you destroyed them?

A. Yes, sir.

Q. Inspector, do you think that is good practise?

A. Well, due to the number of people we talked with that night, and in order to expedite matters, they were really fastly scribbled and perhaps would not be readable by everybody.

Q. Now, I understood you to say that all the respondents admitted to you that they were in a parade. Is that right?

A. Yes.

Q. Did any of the respondents whom you talked with state to you that they were in an information march?

A. The first time I heard the expression used was here yesterday.

Q. Therefore at no time during your questioning of these respondents was march or information march mentioned?

A. No, sir.

Q. How many, Inspector, how many of these respondents did you question?

A. All of them

Q. Did you take their stories down on this paper which you claim you have destroyed?

A. Yes, sir.

Q. On that paper was their name, was it not?

A. Yes, sir.

Q. Was there anything on that paper that you had taken the story?

A. That I had taken their story?

Q. On the original paper?

A. No. We were all able to discern our own handwriting. We all signed the original typewritten sheet. That is Inspector Suosso, Inspector Kelly and myself.

Q. You keep a diary, do you not?

A. Yes.

Q. Have you in that diary the names of the people you talked with, of these respondents, that night?

A. No, sir.

Q. Isn't it the ordinary procedure to keep the name of someone you have arrested?

A. Yes, sir.

Q. And you say there is nothing in your handwriting to that effect?

A. No, sir.

Q. Now, Inspector, might there not have been some information on the original papers which you took of these respondents that they said they were in a march or infor-
[fol. 65] mation march?

A. There was nothing pertaining to an information march.

Q. How many persons did you personally question that evening of the respondents?

A. Eighty-eight all told.

Q. Whether or not you took the story of the eighty-eight down in writing?

A. Either myself, or Inspector Kelly or Inspector Suosso.

Q. Yes, but how many did you take?

A. Oh, perhaps twenty-five or thirty.

Q. Can you tell the jury the names of any of those people you took a story from?

A. Can I tell you the names?

Q. Yes.

A. Yes, sir.

Q. Who were they?

A. Willis Cox, he gave his age as seventy-one and said he lived at 660 Maple Street.

Q. Just the names. To save time, the names of people you talked with is satisfactory.

A. Arvid Moody, John Konides, Orvilla Paquette, Walter Chaplinsky.

Q. Any others?

A. Yes, sir.

Q. Who?

A. Gordon Bailey.

Q. Yes?

A. Milton Lieby, James Gianoulis, John Bonville, Stergius Mingus, Norman Bailey.

Q. Norman Bailey?

A. No, Gordon Bailey.

Q. Now, Inspector, you do not have in your possession any of the original notes made relative to the names of these parties who are now respondents that you took that evening?

A. Not other than the typewritten sheet.

Q. And the typewritten sheet was made by whom?

A. By Inspector Suosso.

Q. What time did you come to the station that night? I understood you to say you came sometime after some of the respondents arrived?

A. Well, a group had arrived at the station when I came in. It was somewhere between six or seven minutes before seven o'clock.

Q. Before seven o'clock?

A. Yes, sir.

Q. You say at that time there was some respondents there at the station?

A. The first group had just arrived.

Q. Whether or not you were there when the second group arrived?

A. Yes, sir. I remained there for the remainder of the evening.

Q. Now, your best recollection what was the time the second group arrived?

A. Perhaps 7:20 or 25.

Q. Were you there when the third group arrived?

A. Yes, sir.

Q. Did you see them come in—the respondents?

A. Well, they were coming in apparently within periods of fifteen or twenty minutes for some little time, and we were busy trying to find quarters to place them in.

Q. Were you in the station at that time?

A. After the first group arrived, within twenty minutes another group came, so we decided to take them all upstairs where we would have more of an opportunity of seating [fol. 66] them in the police court.

Q. So that you were in a position, being in the station, to know when all the groups came in?

A. I was perhaps too busy to be able to give you definitely just what time they arrived.

Q. Now from your best recollection when did the third group arrive?

A. I couldn't be definite on it.

Q. Your best recollection?

A. Perhaps quarter of eight.

Q. Now, how many groups were there that came in the station, if you know?

A. I couldn't say definitely; perhaps four or five.

Q. Now, when did the fourth group arrive?

A. I have no definite recollection of it. I wouldn't want to say.

Q. Well, what is your best recollection in regard to it?

A. I was so busy with those coming in, trying to seat them and make it as comfortable as possible for them, I wouldn't want to say. I wouldn't want to hazard a guess.

Q. You have some idea as to the time?

A. Not definitely.

Q. I didn't ask for definitely. I asked your best recollection in regard to it?

A. I have no recollection of when the last group arrived.

Q. Now, when did the last group arrive, to your best knowledge?

A. Oh, perhaps—well, that I couldn't say. I couldn't say. I wouldn't want to haphazard a guess on it. It would have to be a guess if I did.

Q. I asked for your best recollection?

A. I couldn't tell you.

Q. Was it seven o'clock?

A. The last one?

Q. Yes.

A. No, the first come in about seven.

Q. Was it seven thirty?

A. No.

Q. Was it 7:45 when the last came in?

A. I couldn't say, I don't know.

Q. But you say the third came in at 7:45?

A. It was somewhere in that vicinity, I would say.

Q. Then the fourth must have come in after that?

A. Naturally.

Q. What is your best recollection of when they came in?

A. I couldn't tell you, I was too occupied. I couldn't tell you.

Q. Now, just what, Inspector, if you know, just what were your duties that night at the station when the respondents came in?

A. Well, we naturally inquired as to whether or not they had a permit. We talked with a few to ascertain if there was a permit. Perhaps a dozen of them. Then we tried to get in touch with Surveyor Francis Kenney to ascertain as to a certainty whether or not they had a permit. We didn't succeed in getting in personal contact with him until shortly after nine o'clock.

Q. Still all the respondents you talked with told you they didn't have a permit?

A. Yes, they said they didn't need any.

Q. They said they didn't need any?

A. Yes.

[fol. 67] Q. When, if you know, were the respondents arrested by the police department? When were the respondents arrested by the police department?

A. When were they arrested?

Q. Yes.

A. When brought into the station by the different officers.

Q. Whether or not they were told at that time in your presence that they were under arrest?

A. That I don't know.

Q. What if anything did you say to them?

A. I asked their names, addresses and so forth.

Q. You didn't ask them whether they were under arrest or not?

A. No, sir. I don't know what took place downstairs.

Q. You don't know who brought them in, if they were brought in by anyone?

A. No, I couldn't tell.

Q. Whether or not you know of your own information when the decision was made that the respondents should be locked up in cells?

A. After we got in contact with Surveyor Kenney and found out they had not received a permit.

Q. That was approximately what time?

A. About five or ten minutes past nine, I think it was. I am pretty sure it was.

Q. Whether or not you had them all locked up at that time?

A. Just the men. They wasn't locked up, there wasn't any of them locked up at that time. They were brought

downstairs and booked, after Kenney told us he had not issued a permit.

Q. What time, Inspector, were they brought downstairs and booked?

A. Immediately following that. I would say about 9:15.

Q. Now, if you know, what happened to them after they were booked?

A. They were locked up. The men.

Q. The men were locked up?

A. Twenty-nine of them.

Q. What—who was in this group when you talked with them?

A. Who was in the group?

Q. Yes, that you talked with?

A. What do you mean?

Q. You say you locked up twenty-nine men. Whether or not there were any women?

A. There were forty some odd.

Q. And children?

A. Nineteen children.

Q. Now were they arrested?

A. No, sir.

Q. Were they locked up?

A. No, sir.

Q. Whether or not you know the time that they were allowed to leave the station?

A. They were allowed to leave the station after we questioned them, got their names and addresses and ages. They came one by one. Suosso, Kelly and myself took their names, ages and addresses and allowed them to go on their own recognizance until Monday morning, when they were to return to police court.

Q. Whether or not after you had taken their names, ages, and so forth, was that respondent allowed to go on her own recognizance when you got through with her or was she [fol. 68] detained at the station?

A. No, sir, she was not detained.

Q. She was allowed to go immediately?

A. They appeared to wait for one another. There was a number from Lowell. They remained there in groups after they were questioned.

Q. Whether or not you know of your own knowledge the time the respondents left the station, those who were allowed to go on their own recognizance?

A. I believe the last of them got out of there shortly before or shortly after midnight.

Q. Inspector, isn't it a fact they were, all the women and children, liberated at the same time?

A. Yes, sir. They came along through a doorway. Suosso, Kelly and myself were at a table there. We took their names, addresses and ages and allowed them to go one at a time downstairs.

Q. After you had taken the names and ages of the ones you took, you told them, as I understand you to say, that they were on their own personal recognizance to come back to court on Monday morning. Is that right?

A. Yes.

Q. That was so in regard to all the women and children you interrogated that night of these respondents?

A. We didn't ask the juveniles to come back. We asked the women to come back.

Q. You asked the women to come back?

A. Yes, sir.

Q. After you got through interrogating them, isn't it a fact you told them to go back in the room where they come from, which is now the police court room up there?

A. No, sir.

Mr. Barnard: That is all.

Redirect examination.

By Mr. Broderick:

Q. You say there were eighty-eight respondents, eighty-eight people brought to the station. Is that true?

A. Yes, sir.

Q. Inspector Suosso and Inspector Kelly and you were assigned to interview these people?

A. Yes, sir.

Q. At the time of so doing it is my understanding you made notations and from the notations you made the detailed report?

A. Yes, sir.

Q. I show you a paper and ask if you can identify that paper?

A. Yes, sir.

Q. Is there any names attached to that paper?

A. Yes, sir.

Q. The names are the names of whom?
A. Of the people they brought to the station for parading that night.
Q. Is your name on there?
A. Yes, sir.
Q. Do you recognize your signature?
A. T. D. Kelly, Inspector Kelly, Walter D. Suosso and myself.
Q. This is what you term the original document, containing the names, address of the respondents?
A. Yes, sir.

Mr. Broderick: We offer this, Your Honor.
[fol. 69] Mr. Barnard: I don't feel that should go in as the original record that they took at the station because the testimony has gone in that the original record was destroyed.
The Court: It isn't offered as an original record. Do you object to it going in?
Mr. Barnard: Not as a copy but I do as the original record. The only thing we object to is its going in as the original record.
Mr. Broderick: We offer it as a copy, as State's Exhibit #3.

Q. You say you seated these people in the courtroom?
A. Yes.
Q. You apparently mean the police courtroom?
A. Yes, sir.
Q. There was no court in session at that time?
A. There was no court in session at that time. No. sir.

Mr. Broderick: That is all.

WALTER D. SUOSSO, previously sworn.

Direct examination.

By Mr. Broderick:

Q. You have been sworn, Inspector?
A. Yes.
Q. I show you a paper and ask if you can identify that paper?
A. Yes, sir.

Q. Is there any signature attached to that paper?
A. Yes, sir.
Q. That is the signature of whom?
A. It is my signature.
Q. What is that paper?
A. That is a synopsis of the case.
Q. What do you mean by that?
A. The facts in the case.
Q. How did you obtain these facts?
A. From the original reports.
Q. How did you obtain the original reports?
A. From questioning the people.

Mr. Broderick: I offer this paper as States Exhibit #4.

Q. Was this synopsis taken down by you after the hearing in police court?
A. Yes, sir.

Mr. Broderick: I withdraw my offer.

Q. Inspector, I don't know whether I asked you this previously or not. Did you talk with each of the respondents charged with a violation of—this misdemeanor?
A. Yes.
Q. Whether or not they each informed you they did parade or march?
A. They did.
Q. Whether or not they informed you they did so without a license so to do?
A. I don't recall that we asked them that question.

Mr. Broderick: You may inquire.

Cross-examination.

By Mr. Barnard:

Q. You heard Inspector Sullivan state he took some of the testimony from the respondents that night. Was that taken down in his handwriting, and whether or not it was given to you?
A. I only heard a very few minutes of Inspector Sullivan's testimony and I don't know what he testified to.
Q. He testified—whether or not Inspector Sullivan took [fol. 70] down in writing a story from these respondents whom he talked to?

A. That night when we first started to question them, we started to question them separately so as to speed it up. Inspector Sullivan took down a few, I took down some of them, then we got together after all had been questioned and the questions were repeated in the presence of the three of us.

Q. Do you wish the jury to understand you questioned all of them individually, that Inspector Sullivan questioned them all individually and Inspector Kelly questioned them all individually?

A. Yes, sir.

Q. Whether or not you were all together at that time, you three inspectors, or were you separated?

A. We were all together.

Q. So that we may have the picture correct—a respondent came in before you, men, women and children, and you took their story. Did Inspector Sullivan take their story also?

A. Yes.

Q. Did Inspector Kelly take their story also?

A. Yes. I would like to explain further. Inspector Sullivan took some of them, Inspector Kelly took some of them, I took some of them. After we talked to all of them before they were released we questioned them on the conversations between each one of us collectively.

Q. Yes, but did each respondent have to be questioned individually by each of you three inspectors—that is, for instance take Gordon Bailey, he was before you—now, I am assuming he gave you his story. Now, did he go to Inspector Sullivan and Inspector Kelly, and did they take down his story?

A. Before he was released his story was repeated in the presence of Inspector Kelly, Inspector Sullivan and myself.

Q. So that there was only one story taken of each respondent?

A. That is correct.

Q. And the original writing you made has been destroyed?

A. Yes, sir.

Q. Inspector, State's Exhibit #3 has your name on it, has it not?

A. Yes, sir.

Q. What is that name?

A. Walter C. Suosso.

Q. When did you write your name on this piece of paper?

A. After that was typed.
Q. When was it typed?
A. It was typed that night or the following morning.
Q. The following morning your name was placed there by you at that time?
A. I don't know whether I signed it at that particular time or the next day, or Monday.
Q. But it was within a day or two of the time the respondents were in court. Is that right?
A. Yes, sir.
Q. You feel confident of that, do you Inspector?
A. I do.

Mr. Barnard: That is all.

[fol. 71] Redirect examination.

By Mr. Broderick:

Q. Do you know whether or not the day of the trial or the day following the trial in the Municipal Court a copy of that paper was submitted to Brother Barnard?
A. Yes, sir.
Q. That was the day of or the day following the trial in the Municipal Court?
A. Yes, sir.

Mr. Broderick: Do you admit that is so, Brother Barnard?
Mr. Barnard: It was a copy which was not signed.
Mr. Broderick: It was an exact copy but it was not signed?
Mr. Barnard: That is right.

Q. The trial in the Municipal Court was July 10, 1939?
A. That is right. Yes, sir.

Mr. Broderick: That is all.
Mr. Broderick: The State Rests.

ORDER DENYING MOTION TO DISMISS

The Court: For the purpose of the record, at the conclusion of the State's case the respondents filed a motion to dismiss the case and discharge the respondents upon various grounds stated therein. The motion is denied, and the defendants except.

JOHN H. TIERNEY, previously sworn.

Direct examination.

By Mr. Barnard:

Q. Now, Officer, if I remember correctly you arrested Mr. Chaplinsky at the corner of Elm and Concord Streets?

A. Yes, sir.

Q. On the 8th day of July, that you went with him east on Concord Street, across the common, and you took Mr. Chaplinsky alone to the station?

A. Yes, sir.

Q. Leaving the rest of the marchers at the location known as Amherst and Chestnut Street. Is that right?

A. Yes, sir.

Q. Whether or not—do you recollect what was said by Mr. Chaplinsky to any or one or more of the other marchers as you and Mr. Chaplinsky left to take Mr. Chaplinsky to the station?

A. No, I don't remember him saying anything. He just handed over them signs he had. That is the only conversation I heard.

Q. What was the sign that he handed to him?

A. What particular sign?

Q. Yes.

A. Well, it was one of the so-called sandwich signs, with a placard front and a placard on back.

[fol. 72] Q. So when you took Mr. Chaplinsky to the station he didn't have a sign on him?

A. That is right. He took it off at Amherst and Chestnut Street.

Q. And went to the station without a sign?

A. And went to the station without a sign. Yes, sir.

Q. If I recollect correctly, after you had taken Mr. Chaplinsky to the station you went back over this same route?

A. Yes.

Q. Where you had taken Mr. Chaplinsky alone, and found the other marchers whom you had left there on the opposite side of the street?

Mr. Broderick: May it please the Court, this witness was on yesterday, and this was all gone through.

The Court: Must we go on duplicating the testimony?

Mr. Barnard: This is necessary to lead up to the question I want to ask.

The Court: Why don't you come right to the point you want to bring out. This was all gone over yesterday.

Q. Now, Officer, what was your route on the evening of July 8, 1939?

A. Do you want the boundaries?

Q. Yes.

A. Concord to Bridge; Elm to Chestnut.

Q. Concord to Bridge and Elm to Chestnut?

A. That's right.

Q. Now, Officer, whether or not on Bridge Street you met or talked with any of the respondents which are in court, and who were on the street carrying signs?

A. On Bridge Street?

Q. On Bridge Street.

A. No; the only one I talked with was Mr. Chaplinsky.

Q. Whether or not you know Mr. James Post?

A. I do not.

Q. Whether or not you talked with him on Bridge Street near Birch Street on the night of July 8th?

A. I don't know him; I don't know whether I talked with him or not.

Q. Whether or not you saw any of these marchers on Bridge Street?

A. I saw the tail end of what looked like a march down Bridge St.

Q. Where were you at that time?

A. That I saw the tail end of it?

Q. Yes.

A. I was just coming up Bridge Street. I was right at Bridge and Chestnut at that particular time.

Q. At that time in what direction were these marchers going?

A. Toward Elm Street; they were almost to Elm.

Q. You were going up Bridge Street and they were going down?

A. Apparently they had passed me.

Q. Where did they go?

A. I don't know where they did go.

Q. What direction were they going?

A. I don't know where they went.

Q. Whether or not you made any effort to stop them?

A. Did I make any effort to stop them? No, I didn't.

Q. Why didn't you?

A. While I made my ring they were down below. I was making my duty call.

[fol. 73] Q. Officer, isn't it a fact you saw them on Bridge Street before you arrested Mr. Chaplinsky?

A. I saw them on Bridge Street?

Q. Yes.

A. I saw them on the further end of Bridge Street. I didn't know what it was at first. I was at Bridge and Chestnut.

Q. Will you explain what you mean by further end?

A. By Birch. They were going toward Elm. I was at Chestnut and Bridge.

Q. You were at Chestnut and Bridge and they were going down Bridge Street?

A. They had gone down Bridge Street.

Q. They did not pass you?

A. Not to my knowledge.

Q. You didn't follow along to see who they were or where they were going?

A. No, I didn't.

Q. Whether or not you know when they were going down Bridge Street where they were going, which way did they go?

A. That I don't know.

Q. You don't know whether they went north or south on Elm Street?

A. No.

Q. You don't know whether they crossed Elm Street?

A. No.

Q. Whether or not you saw them on West Bridge Street?

A. On West Bridge Street?

Q. Yes.

A. No, sir.

Q. Approximately what distance were these particular marchers from you when you saw them?

A. From me?

Q. Yes—on Bridge Street.

A. Well, I was at Bridge and Chestnut.

Q. And where were they?

A. Well, they were below Birch Street.

Q. On Bridge and below Birch?

A. That is right.

Q. Now, Officer, having refreshed your recollection, you have no—whether or not you have any recollection of talking to any of them and saying anything to any of them?

A. Mr. Chaplinsky. I asked for a permit.

Q. But the ones on Bridge Street—Mr. Chaplinsky wasn't on Bridge Street?

A. Not to my knowledge.

Q. In fact you know he wasn't on Bridge Street, because he went north on Elm Street and met you at the corner of Concord and Elm Street?

A. That's right.

Q. You know so far as Mr. Chaplinsky is concerned he was not on Bridge Street or Birch Street?

A. I don't quite understand. I don't know that he wasn't there during the night.

Q. You know he wasn't after you arrested him?

A. That's right.

Q. What time did you see these people on Bridge Street?

A. Just as I was making my seven o'clock duty call, perhaps it was three minutes past seven. Within five minutes of seven.

Q. About three minutes past seven. What time did you arrest Mr. Chaplinsky?

A. I stopped him about 7:20, 7:15.

Q. So that you saw the marchers on Bridge Street, on your route,—whether or not they were carrying banners?

[fol. 74] A. I couldn't say.

Q. What attracted your attention from Chestnut Street down Bridge that you saw these people doing—what attracted your attention to them?

A. Two or three pedestrians told me there were gangs around the city parading.

Q. Whether or not you went down to see whether there were or not?

A. I went down Bridge Street after I rang. Yes, sir.

Q. And you rang where?

A. At Bridge and Chestnut.

Q. Therefore as you went down you don't know where this line of marchers were?

A. No, I didn't see them.

Q. So that you saw these paraders? Is that right?

A. Yes.

Q. On Bridge Street?

A. Yes, sir.

Q. You don't remember if any of them had signs or not?

A. No, I don't.

Q. Well, what is your best recollection?

A. I wouldn't want to say whether they had signs, because I would be certain of it.

Q. Well, you must have a recollection in regard to it. You went down Bridge Street after you rang?

A. Yes, but I didn't see them when I went down Bridge Street after I rang.

Q. About twenty minutes after that you arrested Mr. Chaplinsky and took him to the station?

A. Yes, sir.

Mr. Barnard: That is all.

Mr. Broderick: That is all.

TIMOTHY J. AHERN, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?

A. Timothy J. Ahern.

Q. You are a police officer in the City of Manchester?

A. Yes, sir.

Q. Whether or not you were on duty on the night of July 8th, 1939?

A. I was.

Q. What was your route at that time—when did you go to work, what time did you go to work?

A. At four o'clock; I started out at four.

Q. On July 8th, 1939 what route were you covering?

A. On route 15—the boundaries was from Hanover to Concord and Elm to Chestnut.

Q. Hanover to Concord and Elm to Chestnut?

A. Correct.

Q. Whether or not while you were on duty you saw any of the marchers as set forth here, the respondents?

A. At about 7:10 I was going down Concord to Elm to make my 7:15 ring. I was headed west on Amherst. I noticed some marchers coming east on Amherst. I went down and met them face to face. The leader——

Q. Where did you meet them?

[fol. 75] A. I should say about half way. That would be right in front of the Union-Leader Building.

Q. What did you do?

A. I stopped the leader: I asked if he had a license or permit to parade. He said he had permission from police headquarters to parade. I noticed an old man at the end of the line passing out handbills. I said, did you have permission to pass out handbills? He said, I don't know anything about that. I said I will have to take you to the station.

Q. How were they going?

A. Single file.

Q. What route did you take?

A. East on Amherst, turned south on Chestnut on the west side, to Manchester and cut over there into police headquarters.

Q. Who was in that march?

A. The leader was Stergious Mingus, and there was twenty-nine or thirty others—men, women and children.

Q. Were there any others in line that you questioned?

A. No. That was the only one outside of the old man who was passing out handbills.

Q. You say that line of march was proceeding which way when you accosted them?

A. East on Amherst Street.

Q. How many were in that group?

A. I should say about thirty.

Q. Whether or not you saw them—how close were they together when you saw them?

A. I would say in close formation, either two or three feet apart.

Q. Whether or not Mr. Mingus was at the head of that group?

A. Yes, he was at the head of that group.

Q. He was the head of it?

A. Yes, sir.

Q. Whether or not you went to the station with them?

A. I did.

Q. After leaving them at the station what did you do?

A. I went back on my route again.

Q. Whether or not either before or after you arrested this group did you see any other group of marchers?

A. After I got back on my route I noticed Officer Tierney taking a group to the station. I sort of filled in the rear there and walked along with them.

Q. Whether or not you were at the City Hall at Market Street when any of the paraders were there?

A. I was there when Officer Hould was going across the street with a group.

Q. You were at the City Hall and Market Street when Officer Hould was going across the street with some marchers?

A. Another bunch of marchers.

Q. Then you also saw those who were in front of the City Hall. Is that right?

A. I did. Yes, sir.

Q. Did you see them crossing Elm Street?

A. I did.

Q. How close were they together?

A. When crossing Elm Street it seemed as though they were all confused. Traffic was heavy and they seemed confused. It took quite a time to get them across.

[fol. 76] Q. They were lead by Officer Hould?

A. Yes.

Q. Did you see that line extended across on Elm Street?

A. Yes, two groups.

Q. How far north from where you saw Officer Hould was that line extended?

A. It seems as though it extended up by the main door of the City Hall.

Q. You could see to Stark Street?

A. I wouldn't say that.

Q. Stark Street is north of Market?

A. Yes.

Q. And runs in the opposite direction of Elm?

A. Yes.

Q. You saw the marchers at the corner of Stark Street?

A. No, they just extended about to the main door of the City Hall.

Q. Now, Officer, after you saw Mr. Hould taking the marchers away what did you do?

A. Inspector Poulard had a man at the box at the City Hall. I went there and stayed until the wagon came.

Q. The man Mr. Poulard had, whether or not he was carrying a banner or sign?

A. When I got there I don't think he had a banner or sign.

Q. They were at the police box when you saw them?

A. Yes.

Q. Had the police wagon arrived?

A. No; it arrived four or five minutes after I got there.

Q. Were you there when the police wagon arrived?

A. Yes.

Q. How was Mr. Poulard dressed?

A. He was dressed as a civilian, in civilian clothes.

Q. Was he wearing a straw hat?

A. I think he was.

Q. Was he in his shirt sleeves?

A. No. He was dressed as a civilian.

Q. You don't know whether or not he was on duty?

A. So far as I know the inspectors are on duty all the time.

Q. You don't know if he was on his vacation or was having the day off?

A. No, I don't know.

Q. Now, whether or not the wagon—by the way, did you see this person whom Mr. Poulard had go into the wagon?

A. Yes, sir.

Q. Did you see the wagon drive away?

A. Yes, sir.

The Court: What has all this to do with the parade?

Mr. Barnard: It is part of our defense. For instance if you take the position that this is a parade, that these people who have some religious belief have no chance in court under the circumstances, the quicker the proceedings stop the better. They have a right to their defense.

The Court: The difference is they were a religious group. If they could be convicted under a complaint of parading down Elm Street or Market Street or anywhere else without a permit, what difference does that make?

Mr. Barnard: It is part of our defense to show that state has got these people all ganged up or down the streets. Our position is they were ganged up and the only time they [fol. 77] were ganged up was when the police got them together. We have some pictures to introduce here.

Mr. Broderick: Who took these pictures?

Mr. Barnard: Mr. Duncan.

Mr. Broderick: Is he a member of the cult?

Mr. Barnard: Yes.

The Court: What is the purpose of the pictures?

Mr. Barnard: The testimony will be he saw these people going on Elm Street. We want to prove the fellow standing there was he.

The Court: This fellow on the other side?

Mr. Barnard: Yes.

The Court: It might be almost anybody; it might be me. It couldn't be you, but it might be me.

Mr. Broderick: I haven't seen the picture.

The Court: I don't see how they are going to be deprived of their defense. The State can't put in evidence they were parading on Market Street to prove they were on Hanover Street, but you want to put in evidence they were not parading on Market Street to prove they were not parading on Hanover Street.

Mr. Barnard: We are going to show the wagon was sent for to take the marchers to the station.

The Court: One of these four?

Mr. Barnard: No, but one of the Witnesses.

The Court: I have been thinking, what is going to happen to the other sixty odd.

Mr. Barnard: They have got to take the same position.

The Court: Are they going to plead on something?

Mr. Broderick: If these are found guilty they will plead?

Mr. Barnard: Sure.

The Court: Let them have their day in court. The way I think is this: This case rests on Hanover Street. The State could not prove they were parading on Canal Street under a complaint alleging they were parading on Hanover Street. You want to prove they were on Market Street, therefore they couldn't have been on Hanover Street. In view of the fact there are so many interested, and that we hope to clean up the whole situation, I am going to let you have a pretty wide field. I wish you could speed it up a little.

Q. Officer, I would like to show you a picture. Whether or not that is the police wagon, and what is the location that wagon seems to be in?

A. The wagon is on Market Street facing west.

Q. Now, there is a police officer just to the left of that wagon. Can you identify who that police officer is?

A. That looks like myself there.

Q. It looks like yourself. Now, Officer, I heard you, I understood you to say you saw the person whom Inspector Poulard had arrested go into the police wagon?

A. That is correct.

Q. Now, who is the man directly back, if you know, of the police wagon with the straw hat on?

[fol. 78] A. It is hard to tell. I can't see his face.

Q. You wouldn't say it was Inspector Poulard, would you?

A. It is something on his build.

Q. If that was Inspector Poulard, he was in his shirt sleeves that night, was he not?

A. That is correct, if it is Poulard.

Q. You being there when the wagon came, who is the Officer standing on the rear of the ambulance?

A. The house man; the wagon man they call them.

Q. Do you know who that was?

A. Yes, I do.

Q. Who was it?

A. Officer McLaughlin.

Mr. Barnard: I offer this picture as Defendant's Exhibit D.

Q. Now, officer, you identified yourself as being near that police wagon. What if anything did you do afterwards? Where did you go?

A. After the wagon left I noticed a group of men headed south on Elm Street on the east side.

Q. Where?

A. On the east side of Elm Street in front of Leavitt's.

Q. In what location?

A. Right in front of Leavitt's, I should say, about in there.

Q. What were they doing?

A. Marching along.

Q. What was the distance between those persons you saw that were marching?

A. I would call it close formation; two or three feet apart.

Q. Whether or not they were carrying banners?

A. They were carrying banners.

Q. Then what if anything did you do?

A. I noticed them cross at Manchester Street onto the west side of Elm Street.

Q. What was the distance of separation between them when they crossed Elm Street at Manchester Street?

A. They were still in close formation, two or three feet apart.

Q. What did you then do?

A. I noticed they were headed south on Elm Street. I tried to head them off, to stop the leader. I tried to get ahead of them.

Q. How did you get down there?

A. I jumped on a street car.

Q. You jumped on a street car?

A. Yes.

Q. And rode down on the street car to the head of the line?

A. As far as Merrimack and Elm.

Q. Whether or not you split that line of march when you went by?

A. No.

Q. Whether or not you went on a street car or in an automobile?

A. On a street car.

Q. On a street car?

A. I jumped a street car.

Q. Whether or not when you went by the corner of Manchester and Elm Street were there any marchers in the street?

A. No, they were all on the west side of Elm Street.

Q. When you got to the corner of West Merrimack and Elm Street, who did you find there?

A. I noticed Officer Hickey headed north right in Merrimack Street.

Q. Where was Officer Hickey when you first saw [fol. 79] him?

A. Going north on Elm Street below West Merrimack.

Q. Where were those that were marching at that time?

A. Right around at the corner.

Q. Whether or not you said anything to them?

A. I don't think so.

Q. Whether or not Officer Hickey said anything to you?

A. No.

Q. Where was the rear of that line, Officer, when you got down to West Merrimack and Elm Street?

A. I would say about at the main door of the Beacon Building.

Q. That is approximately how many feet north of West Merrimack Street?

A. I would say seventy to eighty feet.

Q. What if anything did you do after you got down there?

A. I noticed Officer Hickey had faced the leader and was talking to him. I just said, we will go to the station.

Q. As I remember, Officer, you said you did not split the line of marchers as you went down on the street car to the corner.

A. No, sir, I didn't.

Q. I would like to show you another picture, Defendant's Exhibit C, and see if you know who the officer is with that marcher?

A. That looks like myself again.

Q. Yes. Now, what location is that?

A. That is about the middle of the street at the junction of Chestnut and Merrimack Street.

Q. Whether or not when that picture was taken you were crossing Chestnut Street going from west to east?

A. That's right.

Q. Now, Officer, being at West Merrimack and Elm Street, whether or not you were there when Officer Hickey started with Mr. Cox to go to the station?

A. I was there. Yes, sir.

Q. Does that picture refresh your recollection?

A. Yes, sir. It does.

Q. And now whether or not these defendants' Exhibits A and B will refresh your recollection? Is that Officer Hickey?

A. That is Officer Hickey crossing the street.

Q. Do you know who was with him?

A. That was Mr. Cox.

Q. Do you know the man directly ahead of Mr. Hickey and Mr. Cox?

A. No, I don't know.

Q. Whether or not you can see that man had a banner or placard?

A. I can't see any banner or placard on that man in the middle of the street.

Q. Well, you look at Exhibit A. Now, in the center of that picture is a person ahead of Officer Hickey and Mr. Cox, and he is carrying a banner, "Fascism or Freedom"?

A. Yes, that is right. There is a man ahead of him.

Q. Now, the man ahead here is in his shirt sleeves, is he not?

A. He is in his shirt sleeves. Yes, sir.

Q. Whether or not you remember seeing that man with a [fol. 80] banner going across Elm Street in front of Officer Hickey and Mr. Cox?

A. No, I don't remember seeing him.

Q. Whether or not you instructed anyone to go to the station?

A. I instructed Officer Hickey to head toward the station with Mr. Cox.

Q. You made that instruction at the corner of West Merrimack and Elm Street?

A. That's right.

Q. As Mr. Hickey started to the station, how far apart were the marchers, you remembering, at the corner of Merrimack Street, because you came up at the rear of the line?

A. They marched single file.

Q. How far apart?

A. Two or three feet, like they had been marching.

Q. You feel that is right, that they were two or three feet apart?

A. Yes, they marched up in single file.

Q. Officer, I show you Defendant's Exhibit A again, which is the man with the banner in front of Officer Hickey and Mr. Cox. Below and between Officer Hickey and Mr. Cox, whether or not there isn't a banner there?

A. There is a banner there. Yes, I see a banner there.

Q. So they were marching behind him?

A. That's right.

Q. And how far do you think Mr. Hickey was from you when you came to the north side of Elm Street—how far east was Mr. Hickey with Mr. Cox?

A. Do you mean from the front to the rear of the parade?

Q. That is correct.

A. I should say there was probably seventy to eighty feet between us.

Q. And how many were in that march?

A. There was quite a group there. I would say seventy-five to eighty people.

Q. Now, the picture of yourself with a marcher at the corner of Chestnut and Merrimack Street—where were the other marchers when you were at that location?

A. They were headed into the station. Officer Hickey was already in the station at the head of the line.

Q. Will you look at Exhibit C. Is there anyone in that exhibit of the defendants except you and the one that is with you?

A. That is the only one there.

Q. That is more than two or three feet, isn't it?

A. Well, as we were coming along Merrimack Street some of these marchers were passing out bills to automobiles parked on the north side of Merrimack Street. There might have been a little confusion there as they passed.

Q. When you were going east on Merrimack Street, when you reached Chestnut Street you were able to see the station by looking north?

A. I was.

Q. What is the distance from West Merrimack Street to the police station?

A. Do you mean to Manchester Street?

[fol. 81] Q. From the corner of Merrimack Street and Chestnut Street to the station?

A. Do you mean to the corner of Manchester Street? The station goes in a back street there.

Q. I mean to the main door of the station.

A. I should say that would be around sixty feet.

Q. When you and this marcher arrived at the location of Merrimack Street and Chestnut Street, how many marchers were there in view of you up to the station?

A. I should say about one-third of the parade got to the station while we were at the junction of Merrimack Street and Chestnut.

Q. About one-third?

A. About one-third.

Q. As they were marching in the station about how far apart were they?

A. On the way to the station, this man was Mr. Bailey and he kept talking about the supreme court in Washington, the supreme court this and that. I think we probably got a little in the rear, but they were in close formation on Chestnut Street.

Q. Still you say about two-thirds were in the station when you got to the corner?

A. I would say about one-third.

Q. One-third in and two-thirds out?

A. Yes, sir.

Mr. Barnard: That is all.

Cross-examination.

By Mr. Broderick:

Q. What was the condition of traffic that night, Officer?

A. The traffic was very heavy, especially at West Merrimack and Elm. There was a jam there.

Q. Whether or not the pedestrian traffic was exceptional in any way?

A. There was quite a congestion there.

Q. Did I understand a group was broken up by the City Hall?

A. Yes.

Q. Which group was this?

A. The group Officer Hould took to the station.

Q. While the officer was taking in that group, do I understand there was still another group parading, knowing the other group was held up?

A. After the wagon came.

Q. Still another group continued to parade on Elm Street, knowing the wagon had come?

A. Yes, sir.

Q. Whether or not these pictures were taken after the arrest?

A. The pictures were taken after the arrest. We were walking when the pictures were taken.

Mr. Broderick: It is understood the State does not claim the parade continued after the arrest.

Q. Do you know who took the pictures?

A. No, I do not.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. I understood you to say traffic was heavy?

A. On West Merrimack and Elm Street.

Q. Yes. I would like to have you look at Defendant's Exhibit B and see whether or not that picture shows any heavy traffic?

[fol. 82] A. The traffic was all stopped there, Mr. Barnard.

Q. Yes, but on the left hand side of the picture, and in front of Officer Hickey there are two people crossing Merrimack Street, are there not?

A. That is right.

Q. Below and back of Officer Hickey and on the east side of Elm Street and at the common how many people does it show there in the picture?

A. About five or six, I guess.

Q. You don't—would you call that traffic heavy?

A. I said West Merrimack and Elm was where the jam was.

Q. Whether or not the jam there was caused by the police officers and not the marchers?

A. Well, there is always a crowd of people waiting there for street cars, and any march or parade would make a jam there awful easy.

Q. Ordinarily when a police wagon comes there is more or less of a crowd?

A. You are talking about West Merrimack and Elm Street, or Market and Elm Street?

Q. Market and Elm.

A. Yes, there is a jam there as a rule.

Q. I would like to have you look at Defendant's Exhibit D, when the wagon was there and you were there was there any heavy traffic or crowd, at the time that picture was taken, which you identify as being your picture?

A. I can see only three here—four.

Q. You wouldn't call that a crowd?

A. Well, we are parked west on Market Street. There were people back of me on Market Street and Elm. That is where the jam is in traffic.

Q. The police box is how far west of Elm Street?

A. I would say fifteen or eighteen feet.

Q. Therefore if there was any crowd at the corner of Market and Elm Street at that time when the picture was taken it would certainly show in the picture?

A. Not at Market and Elm.

Q. Why not?

A. The picture is facing west. Facing east it would show the crowd at the corner or the jam.

Q. But when the wagon comes isn't there always a jam?

A. Not always. If there is any excitement as a rule somebody will come.

Q. Whether or not, Officer, at Market and Elm Street, whether or not there was any indication that one of these marchers that you saw that had been arrested was put in the wagon?

A. I couldn't say if he was a marcher or not. I know he was at the box with the inspector.

Q. Whether or not there were any marchers around the wagon that you saw?

A. No. Officer Hould had already headed them toward the station.

Q. They had all left that location?

A. That's right.

Mr. Barnard: That is all.

[fol. 83] Recross-examination.

By Mr. Broderick:

Q. Referring to Merrimack Street between Elm and Chestnut Street, is there any place of business of the right hand side or south?

A. You mean the park?

Q. That's right.

A. No.

Q. It's a big open park without a single place of business?

A. That is the story.

Q. On the other side there is a barber shop and a tailor shop and no other places of business?

A. Yes.

Q. As a rule is traffic heavy there?

A. Foot traffic ain't very heavy there as a rule. No.

Q. Did I understand you to say these respondents, even on the way to the station, were handing out handbills?

A. Yes.

Q. They would step out of line?

A. Yes, and hand out bills.

Q. If this picture was taken facing Elm Street it would be entirely different with reference to traffic?

A. It would.

Q. This is a picture taken from Elm Street facing west?

A. Right.

Mr. Broderick: That is all.

Further redirect examination.

By Mr. Barnard:

Q. You say they were passing out handbills. Who did they pass them to?

A. To the people on the sidewalks and in automobiles on that side of the street.

Q. Now, Officer, if you will look at Exhibit A, tell me where Officer Hickey and Mr. Cox were on that street at the time the picture was taken, you being familiar with the block between.

A. Opposite the side door of James Hill's Store on Merrimack Street.

Q. Does that picture show there is any considerable number of people on that street down by the back door of James W. Hill Co.?

A. You can't see the back door in this picture.

Q. I understood you to say Mr. Hickey's position was about at the back door of the Hill Store?

A. The side door.

Q. The side door on Merrimack Street?

A. The side door on Merrimack Street. Yes.

Q. Does that picture indicate there is any heavy traffic there?

A. Just at the corner. It shows people standing on the corner.

Q. Yes, and how many?

A. Eight or ten I should say.

Q. You should say they are down at the corner of Merrimack and Elm St.?

A. It looks as though they were almost down to the corner. It looks that way.

Q. There is a traffic light on the northeast corner?

A. That's right, the northeast corner.

Q. That traffic light is out at the curbing, the east curbing on Elm Street, is it not?

A. That's right. It is right out there.

Q. Now, whether or not—and across the street, directly across Elm Street is a fruit store?

A. That's right.

[fol. 84] Q. Whether or not those few people who are standing there are standing very close to that light that you can see?

A. It seems as though they are around the light and around the window.

Q. That would be on Elm Street?

A. Part of Elm Street and part of Merrimack Street I would say.

Q. Part of Elm and part of Merrimack?

A. Yes.

Mr. Barnard: That is all.

JOSEPH A. POULIARD, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?

A. Joseph A. Pouliard.

Q. You are an inspector of the police department?

A. I am.

Q. You were a member of the police department July 8th, 1939?

A. Yes, sir.

Q. Whether or not some time during that day you made an arrest of one of the marchers and one of the respondents here?

A. I did.

Q. Where did you accost the person that you arrested?

A. I first see them at the corner—just between Spring Street and—well it used to be Kidder Court.

Q. Spring Street and Kidder Court?

A. Yes.

Q. How many blocks is that from the corner of Market Street and Elm?

A. Oh, three or four blocks.

Q. Were you on duty—whether or not you were on duty that day?

A. No, sir, I was on my vacation.

Q. When you saw this group at Spring Street and Elm what did you do?

A. I parked my car and got out and told them I was an officer and they couldn't parade and couldn't pass out handbills.

Q. That was the corner of Spring and Elm Streets?

A. About there, yes. In that vicinity.

Q. Do you know the person whom you arrested?

A. I don't know as I could pick him out again.

Q. Whether or not he was carrying a banner?

A. He was carrying some papers. I wouldn't say it was a banner. He had some papers in his hand.

Q. Did he carry an upright banner or one of the sandwich signs across his body?

A. He had something. I can't recall just what it was. I didn't pay much attention to the sign, but he had some papers.

Q. Did he make any objection to your accosting him?

A. Not the first time. He kept going right along. He didn't say aye, yes or no, but kept passing bills on the street, so I picked him up and took him to the box.

Q. At what location did you pick him out of line?

A. Between Stark and Mechanic Street.

[fol. 85] Q. Stark is the next street above Market Street?

A. That's right.

Q. How were you dressed, Inspector?

A. In civilian clothes.

Q. Were you in your shirt sleeves?

A. I believe I was. Yes.

Q. Now, Officer, I understood you to say you arrested this marcher between Stark Street and Mechanic Street?

A. I believe that is the spot. Yes.

Q. Did you come with him immediately to the box at Market and Elm St.?

A. Yes.

Q. On the way down whether or not you passed any marchers?

A. No, they were ahead of us.

Q. Were they ahead of you all the time?

A. Yes.

Q. Did you pass them at any time before you got this marcher to the police box?

A. At the corner of Market and Elm Street Officer Hould had held up the head of the parade there.

Q. Whether or not the other marchers came up together, or were they separated?

A. What do you mean?

Q. You must have gone by the marchers if you took him to the police box?

A. Yes.

Q. When Officer Hould held up the marchers——

A. Yes. I saw Officer Hould on the corner.

Q. —you went by the rest of the marchers with this man?

A. Yes.

Q. Where on Elm Street did you start to go by these marchers?

A. It was right in front of the City Hall.

Q. In front of the City Hall?

A. Yes, right at the corner. They were grouped there.

Q. Do you feel positive about that?

A. Yes, sir.

Q. You didn't pass them up at Stark Street?

A. I don't think so.

Q. You wouldn't say you didn't?

Mr. Broderick: May I inquire the purpose of this question?

A. It is hard to say who was one of them and who wasn't. I was watching the prisoner, I wasn't watching the rest of the parade.

Mr. Broderick: So far it has been brought out the officer made an arrest. I would like to inquire the purpose of this questioning

Mr. Barnard: We will identify this marcher as being put in the police wagon as part of our defense in this case, and also the place he was arrested. He has stated he passed them all in front of the City Hall.

The Court: In view of the fact there are so many different complaints and it is understood by the State and the defense that these cases are going to settle all the cases, I do not feel like restricting the evidence. So far as these particular cases are concerned I cannot see that it has any bearing.

Mr. Barnard: I think that is true, but the understanding is there are sixty-eight respondents here arrested by the police in different parts of the city. Therefore, while there [fol. 86] are only five being tried, they are all subject to the decision of the jury. Therefore we feel the jury should have all the facts.

The Court: You have shown this particular defendant was arrested at Stark Street, taken to the box and put in the wagon.

Q. I show you Defendant's Exhibit D, Inspector. See whether or not that is you in back of the police wagon talking to some police officer.

A. It resembles me from the back.

Q. You are in shirt sleeves?

A. That's right.

Q. And citizens clothes?

A. That's right.

Q. Now, if you know, who was the officer on the left of the wagon?

A. I can't make him out.

Q. But that is you?

A. I presume it is. Yes, I would say it is.

Q. Now, whether or not you had assisted this marcher you picked out of the line somewhere on Elm Street into the wagon at that time? A. Yes, I believe that was it.

Q. That is a fact, isn't it, that you assisted him into the wagon?

(No answer.)

Q. Whether or not he had a banner with him when you arrested him and when you put him in the wagon?

A. He had some papers. I wouldn't say it was what you would call a banner, but he had some papers. It wasn't one of these. It might have been one of these cards. It wasn't one of these big ones (indicating sandwich sign) but it might have been one of the smaller cards or papers or signs.

Q. It wasn't a sandwich sign and it wasn't a standard. You don't remember what it was?

A. I don't remember what it was.

Mr. Barnard: That is all.

Cross-examination.

By Mr. Broderick:

Q. Did you inform this man you were a police officer before you arrested him?

A. I did.

Q. Do I understand after you conveyed that information he continued to parade?

A. Yes.

Q. And you then arrested him?

A. Yes.

Q. What was the condition of traffic outside of the City Hall that night?

A. Very heavy.

Mr. Broderick: That is all.

Mr. Barnard: That is all.

HAROLD B. DUNCAN, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?

A. Harold B. Duncan.

Q. What is your occupation?

A. I am one of Jehovah's Witnesses, an ordained minister of the gospel.

Q. Whether or not you were here on the day of July 8th, 1939?

A. Yes, I was here. I came to the City of Manchester the [fol. 87] evening of July 8th from Dover, N. H., where I happened to be that particular evening?

Q. While you were here what did you do, if anything?

A. Immediately upon arriving here I parked my car down on a street outside the restricted area, and expected to participate in this information march. I had with me a camera to take pictures of the march and any incidents that took place while we were marching, but on arriving here I was too late to get in the march as all the placards were in use. There were no more of them to put on, so I followed along the last line of march, which was ahead of me. It was already on the street when I reached here. I caught Mr. Gordon Bailey at the end of the line. I had my camera with me ready for action. I had a fast film pack in. That is, an express film.

Q. At what location did you catch up with Mr. Bailey?

A. I caught up with Mr. Bailey on Hanover Street, just as they had left the Odd Fellows Hall.

Q. Now, Mr. Duncan, I will show you some pictures and see whether or not you can identify them as being pictures you took that night or that afternoon. I show you Defendant's Exhibit A. Was that a picture taken by you?

A. Yes, sir, it was.

Q. And Defendant's Exhibit B?

A. Yes, sir, this is the second picture I took that day, that evening.

Q. I show you Defendant's Exhibit D.

A. Yes. This is the first picture I took that evening.

Q. I show you Defendant's Exhibit C.

A. Yes. This is the last picture I took that evening. There are some others that are not in there.

Q. Now, I show you a picture and ask whether that was one if the pictures taken by you on July 8th of the marchers?

A. Yes, it was.

Mr. Barnard: I offer this as Defendant's Exhibit E.

Q. I show you another picture. Did you take that picture?

A. Yes, I did.

Mr. Barnard: I offer this as Defendant's Exhibit F.

Q. I show you another picture. Whether or not you took that picture?

A. Yes, I took that one also.

Mr. Barnard: I offer this as Defendant's Exhibit G.

Q. I show you another picture. Whether or not you took that picture?

A. Yes; this is in front of the police station. That is next to the last picture I took.

Mr. Barnard: I offer this as Defendant's Exhibit H.

Q. Now, Mr. Duncan, I show you Defendant's Exhibit E, and ask you if that was some of the information marchers that were here on the day of July 8th?

A. Yes, it is.

Q. Do you know the street that picture was taken on?

A. Yes, I do. The picture was taken at the intersection [fol. 88] of Chestnut and Merrimack Streets. I was facing west.

Q. Now what is the distance, the approximate distance between the marchers as they proceeded east on Merrimack Street?

A. To my knowledge and understanding, I did not see a single marcher less than six feet apart, and the majority of them were from eight to thirty feet apart.

Q. Were these marchers being led, to your knowledge, by an officer?

A. Yes. Officer Hickey was leading the—not the one at the head of the march, but he was leading the second one in the march, which happened to be Mr. Cox.

Mr. Broderick: This was after the arrest.

The Court: There is no claim they paraded after the arrest, Mr. Barnard.

Mr. Barnard: Yes, but our testimony is going to be conditions after the arrest were the same as before the arrest, except as it was interfered with by the police.

Mr. Broderick: I understand this witness arrived too late to participate in the parade; therefore he does not know what conditions were prior to the arrest.

The Court: Why don't you go ahead and show conditions at the time of his arrival?

Mr. Barnard: We will, Your Honor.

Q. Whether or not, Mr. Duncan, you know who the marcher was ahead of Mr. Hickey and Mr. Cox?

A. Yes, I do.

Q. What was his name?

A. Milton L. Lieby.

Q. Mr. Duncan, I understand that you caught up with one line of the marchers on Hanover Street and you—that was Mr. Bailey, was it not?

A. Mr. Bailey was at the tail end of the last march.

Q. Did you go up and accost him or did you walk with him or were you walking behind him?

A. I walked beside him and talked with him a few minutes, as far as the intersection of Elm Street.

Q. What was the condition of the marchers down Hanover Street as to the distance between the marchers and before the arrest?

A. Well, all the marchers I could see ahead in the line of march, you could see it clearly to the corner, from the picture I have in my mind yet it is very clear that they were all at least eight feet apart and the majority of them were approximately fifteen feet apart.

Q. And they were traveling single file?

A. Yes, they were traveling single file.

Q. Whether or not a great many of them were carrying banners or placards?

A. Oh, yes, everyone in that line had at least one of the placards on them. Most of them had only one. They didn't have them on both sides because one of the marchers afterwards told——

Q. That is hearsay. I don't want that. Some had one and some had two?

A. That is right.

[fol. 89] Q. Whether or not, of your own knowledge, before you caught up with Mr. Bailey had the line of march turned on Elm Street.

A. Yes, sir.

Q. Which way had they turned?

A. They had turned to the left.

Q. After you arrived at the intersection of Hanover and Elm Streets, whether or not you saw those marchers on the east side of Elm Street, having turned to the left, which would be going south?

A. Most of the marchers—there were some on Elm Street on the left hand side yet, but some of them had already crossed over to the right hand side down farther. That is, farther than the intersection of Hanover and Elm Streets.

Q. They had crossed over Elm Street onto the west side of Elm Street?

A. Yes.

Q. Whether or not you saw them crossing Elm Street?

A. I do not remember particularly that particular point for the simple reason that the police wagon was over at Market Street at the corner and I ran down there immediately to get a picture of it.

Q. When did you next see this group of marchers?

A. After I took the snap, the picture of the police patrol wagon, the other marchers were marching down Elm Street. At that time I saw a police officer stop either a laundry truck or some other kind of a car to my knowledge and flag it down or hail it down and ride down to the next intersection, which happened to be Elm and Merrimack Street.

Q. Whether or not there were any marchers on Elm Street when you saw the police officer flag whatever vehicle he did?

A. There were marchers on the sidewalk marching in an orderly manner, in which same manner they had been. That is, down Elm Street on the west side.

Q. What did you do?

A. I immediately ran ahead to get to the next intersection of Elm and Merrimack Streets to take some more pictures and see how they were marching.

Q. Whether or not—where was the rear of this procession when you went down the street, if you know, down Elm toward West Merrimack Street?

A. It was approximately at the middle of the block.

Q. Do you mean approximately at the middle of the block from Hanover Street?

A. You know where there is a fruit store? There is a fruit store right on the corner of——

Q. West Merrimack Street?

A. It isn't a fruit store, but at the intersection of Market Street, right after I took the picture of the patrol wagon I ran down the street as fast as I could to get in position ahead of the line to take a picture of the group. I didn't know which way it was going to turn. I didn't know the line of [fol. 90] march at all, the route they were going over. I passed the tail end of the line just about the middle of the block.

Q. Between Market and Merrimack Streets?

A. That is right, between Market and Merrimack Streets.

Q. What was the condition of traffic on the west side—where were you, in the street or on the sidewalk?

A. On the sidewalk.

Q. What was the condition of pedestrian traffic on the sidewalk at the time when you were going down to Merrimack Street?

A. My honest opinion of traffic that night is this: it was the lightest traffic I have ever seen in Manchester.

Q. How did you get down there?

A. I ran down on the sidewalk among the people.

Q. Whether or not you had any trouble with pedestrians on the street running down there?

A. Not a bit.

Q. Where was the rear end, or the last man, when you passed him—in the middle of the block?

A. Approximately at the middle.

Q. How near was the nearest marcher to him?

A. Well, the distance between Mr. Bailey and the last marcher—it was a great distance. He was quite a ways from the last marcher. It must have been thirty feet. It was a distance as great as to where he is now.

Q. You went by Mr. Bailey?
A. Yes.
Q. You went by the other marcher next to him?
A. Yes.
Q. What was the distance between the other marcher and the one next to him?
A. Not less than eight feet.
Q. Were they marching at that time or were they stopped?
A. They were slowing up somewhat because of traffic at the end of the block. The one at the head was waiting for the traffic light to turn. The ones who had been participating in the march had been instructed to observe all traffic signals and give all traffic the right of way and to be very considerate of traffic.
Q. You have had some experience in information marches before, have you?
A. Yes, sir.
Q. What are the instructions given to information marchers?

Mr. Broderick: I object, Your Honor.
The Court: What was given here may be of some account.
Mr. Barnard: I will withdraw the question for now.

Q. I understood you to say you had participated in other marches. Whether or not you gave any instructions to these marchers here in Manchester on July 8th?

Mr. Broderick: I object.
The Court: I understand the witness didn't come here until after the marchers had started.
Mr. Barnard: That is true. That is all.

[fol. 91]. Cross-examination.

By Mr. Broderick:

Q. What did you say your name was?
A. Harold B. Duncan.
Q. What is your occupation?
A. Minister of the gospel.
Q. Have you a church or parish?
A. Like other of Jehovah's Witnesses——
Q. Have you a parish?
A. Yes.

Q. Where is your parish situated?

A. The world at large.

Q. What particular spot in the world at large?

A. At the present time I am in Maine and New Hampshire.

Q. With no particular church or spot?

A. No.

Q. You cover the entire state of Maine and state of New Hampshire?

A. No, not the entire state of Maine and state of New Hampshire. I work in three counties in Maine and the entire state of New Hampshire, with the exception of one county.

Q. In covering the two states you have these placards and signs which are exhibited here?

A. Yes.

Q. The same sort of signs you carry in other states?

A. Yes.

Q. That is the sort of thing you wish people to study?

A. Yes.

Q. That religion is a snare and a racket?

A. Yes.

Q. Is that what you preach?

A. Yes.

Q. That is your honest opinion, that religion is a snare and a racket?

A. Yes.

Q. I want to ask if you also teach serve God and Christ the king. Is that one of your teachings, sir?

A. That is right.

Mr. Barnard: Where the witness answers yes, I believe the witness is entitled to explain why he believes they are true.

Mr. Broderick: He will have an opportunity to. I don't intend to restrict this witness one bit.

Q. What were you doing between 6.15 and 7.55 on July 8th last?

A. Between 6.15 and 7.55 of the evening of July 8th I happened to be in Dover, New Hampshire, leaving Dover, New Hampshire with other parties for Manchester, New Hampshire.

Q. Did you participate in a parade in Manchester, New Hampshire on July 8th?

A. I did not, with the exception of marching along beside Mr. Bailey for a short distance, talking to him after I caught up with the line of march that had gone out just before I arrived at Odd Fellows Hall.

Q. What was Mr. Bailey doing—whether or not he was parading?

A. He was marching.

Q. Were you marching beside Mr. Bailey?

A. I was not marching as one of the participants in the march, no.

Q. What were you doing if you were not marching as one of the participants in the march? What were you doing?

A. I had a camera with me for the purpose of taking pictures of activities in the city in regard to the march.

Q. And while having a camera you walked beside Mr. [fol. 92] Bailey?

A. I walked beside Mr. Bailey maybe a third of a block on Hanover Street, like anyone would if they walked down street and talked to an ordinary friend or acquaintance.

Q. So you merely talked with this man as an ordinary friend or acquaintance and marched half a block only. Is that right?

A. I didn't march in the information march at all.

Q. You did not participate in the parade at all?

A. Not a particle.

Q. That is probably the reason you were not arrested that night?

A. It probably was.

Q. In other words, you didn't desert your group?

A. No.

Q. You stayed with them that night?

A. I wasn't with a group.

Q. You were not with a group?

A. No.

Q. Then if you were not with a group and didn't participate in a parade, tell us what you did do that night.

A. All right. I came over with the intention of being in a march, in one of the groups, to march here.

Q. I don't care what your intention was. Please tell us just what you did, if you will.

A. Well, sir, when I came here, as I said before, the groups had already left the hall. All these placards had been distributed among those of the groups. There were

no more to be put on, because there was only a certain number in the groups, as had been previously arranged. I couldn't participate. I hurried to catch up with a group to take pictures. I had never met Mr. Bailey previous to this time, but he knew me and spoke to me.

Q. The substance of your testimony is this: you left Dover, came for the purpose of taking pictures, arrived too late, the placards were gone and you took pictures. Is that the sum and substance of it?

A. No, that is not the sum and substance of it.

Q. What else did you do?

A. As I told you, I left Dover, New Hampshire, arrived late here. I had to park my car. After parking my car I went to the Odd Fellows Hall. When I went to the hall I found the marchers had all left.

Q. So the hall was vacant?

A. With the exception of some friends at the hall.

Q. All right.

A. Then I proceeded downstairs and out in the street. I carried my camera. I saw the marchers ahead between there and the corner, so I ran to catch up with Mr. Bailey.

Q. I don't like to interrupt but your testimony is the same as before.

The Court: There is no occasion for going over this twice. The witness has testified once what he did. That should be enough.

Mr. Broderick: I say this is just a repetition of his testimony.

Q. I am now asking you what did you do on this night? [fol. 93] You took a few pictures, didn't you? That is so?

A. Yes, I took seven pictures that night.

Q. Now, will you tell us why you didn't take any pictures showing conditions of traffic on Elm Street that night outside of the Public Service Company building for instance. Wouldn't that be a true picture of traffic?

A. I wasn't interested in conditions of traffic.

Q. I see. Will you tell us why you didn't take any pictures on Elm Street in front of the City Hall? Is it the same answer, that you were not interested in conditions of traffic?

A. My answer would be different. When I came around the corner at Elm and Hanover Streets and saw the police patrol, I ran over and snapped a picture, because I thought

it had some connection with some of our friends in this information march.

Q. Why did you take the picture?

A. Because I have found it a good example in previous marches of Jehovah's Witnesses where Fascists and Communists have tried to disturb our peaceful Christian assemblies and have used them to good advantage.

Q. You intended to use them to good advantage?

A. Yes, I intended to use them to good advantage.

Q. You find it now necessary to use them?

A. Yes, it seems to be.

Q. Was any complaint made to you of any ill treatment to the members of Jehovah Witnesses, was there any Communistic or Fascism talk about in front of the City Hall?

A. I might say there were slight traces of it in some sense of the word.

Q. Can you prove any isms were talked about outside the City Hall, or carried on that night in front of the City Hall?

A. I might say there were groups of boys who followed Officer Hickey up the street, running along and saying, they ought to be arrested, and this, that and the other. Over by this white church. I don't know if it is a Baptist church. It is on the corner of Merrimack and Chestnut Streets. The police officer said run along or I will take you in.

Q. I see——

A. Heretofore in some cities where we had our marches——

Q. I am not interested in other cities. The only complaint you had was a group of boys remarked something after these men when they were arrested?

A. Yes; they were eighteen to twenty-five years old.

Q. Where do you live? Did I ask if you were a resident here?

A. I live at 1726 Broadway, South Portland, Maine.

Q. South Portland, Maine. Can you give us a distinction between an information march and a procession?

A. Well, an information march is a dignified, forward [fol. 94] movement of the Lord's people in disseminating information for the benefit of the public.

Q. And that information is in the form of these cards, that religion is a racket and a snare?

A. That is only part of the information.

Q. I see. Nevertheless, an information march is nothing more nor less than a march—the people actually march?

A. An information march is used exclusively for disseminating or giving out information to the public.

Q. In order to give out information to the public is it necessary to have information marches?

A. It is one of our means of preaching the gospel of the kingdom.

Q. One of the ways of preaching the gospel is marching through the public streets?

A. We have found it is one of the best methods of spreading the word to the world.

Q. Do you usually pick a busy time for these marches?

A. Yes, we pick a time when there are the most people out. Naturally we want to reach the most people. Saturday night is much better than other nights for that simple reason.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. When you took the picture of the police wagon on Market Street did you know at that time that the marchers had been arrested?

A. I learned——

Q. No. Did you know at the time you took the picture of the police wagon that they had been arrested?

A. I did hear, yes, that some had been arrested previous to that.

Q. You did know some had been arrested previous to that?

A. By the people talking on the street.

Q. You did not know at the time you took that police wagon picture that the group which Mr. Bailey was in had been arrested?

A. No. It hadn't, so far as I know.

Q. It hadn't been arrested?

A. So far as I know, no.

Q. When did you first learn they had been arrested?

A. I didn't know they had been arrested until I arrived at the intersection of Elm and Merrimack Streets, when Officer Hickey started across the street with Mr. Cox.

Q. So far as the particular marchers which you saw, who were with Mr. Bailey, you didn't know they had been arrested at the time you took the picture of the wagon?

A. Absolutely not.

Q. You did know some of the others had been arrested, from hearsay?

A. I had heard people on the street talking about them arresting them. That is all I knew about it.

Q. Because you happened to take a picture Saturday night, July 8th, late Saturday afternon, July 8th—is that the usual thing you have done where they have had marches in other places?

[fol. 95] Mr. Broderick: I object.

A. Yes.

The Court: That is immaterial. That has nothing to do with what was done here. The jury will disregard it.

Mr. Barnard: We are trying to show by this question that it is the usual procedure to take pictures.

The Court: That is what I assumed you wanted to show. I don't think it is material. You are entitled to an exception if you don't like my ruling.

Mr. Barnard: We will save our exception, Your Honor.

The Court: All right.

Q. Whether or not the picture was taken of the patrol wagon for the purpose of a trial?

Mr. Broderick: I object to that.

The Court: For the purpose of what?

Mr. Barnard: For the purpose of a trial.

The Court: You may answer.

Mr. Broderick: All right.

A. No, I didn't take the picture for the purpose of a trial, but from experience——

The Court: That is the answer. You don't need to argue it.

Mr. Barnard: That is all.

Recross-examination.

By Mr. Broderick:

Q. All the pictures you took were taken after the respondents were arrested. That is so, isn't it?

A. Not to my knowledge.

Q. Well, most of them?

A. Most of them were but not all of them.

Q. You did take some of the respondents actually walking into the police station?

A. That is right.

Q. You know that was after?

A. Yes.

Q. You know when the respondent was taken into the police patrol, you know that was after the arrest?

A. At the time I took the picture of the police patrol I didn't know definitely one of our people had been arrested and was placed in the patrol wagon at that time.

Q. I see. In other words, if anyone was arrested in the city, you would take a picture because possibly it might be one of the Jehovah Witnesses?

A. I would under that circumstance.

Q. You expected they were going to be arrested, you anticipated that sort of thing?

A. May I explain?

Q. You may answer yes or no and then explain. Did you anticipate if the Jehovah Witnesses held a meeting in the city that they were going to be arrested?

A. No, not necessarily.

Q. You say traffic conditions that night were—it was the lightest Saturday night traffic you had ever witnessed?

A. In Manchester.

Q. Do you come to Manchester frequently?

A. Well, I have been here on several occasions.

Q. When was the last time you called?

A. The last time?

Q. Yes.

A. Well, the last time I was here in Manchester—I can't [fol. 96] say the exact date without looking up my diary.

Q. Oh, the approximate time?

A. Approximately seven or eight weeks.

Q. Do you call that very light traffic?

A. Of course that is only the friends marching on that street.

Q. Have you any idea of the number of cars there?

A. Cars are parked along the street.

Q. There are so many cars there you wouldn't be able to count them from that picture?

A. That is, parked?

Q. I say there are so many cars there you wouldn't be able to count them from that picture. Isn't that a fact?

A. I could count them.

Q. Do you regard that as light traffic?
A. Yes, sir.
Q. So far as you know, all of the Jehovah Witnesses who participated in the parade that night were arrested—that is with one exception, and that exception is you. That is true, isn't it?
A. That is not true.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. You have a banner in front of you which says religion is a snare and a racket. Will you explain that to the jury and why if you are carrying that banner, or your people are carrying——

Mr. Broderick: Doesn't the banner speak for itself?
The Court: Of course the real issue here is whether there was a parade or a procession on Hanover Street.
Mr. Broderick: That is true.
The Court: I don't see how that is going to help us, is it?

(Conference at bench.)

Mr. Barnard: That is all.

Gordon D. Bailey, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. Mr. Bailey, what is your full name?
A. Gordon D. Bailey.
Q. Where do you live?
A. Lowell, Massachusetts.
Q. What is your occupation?
A. Ordained minister of the gospel.
Q. Are you a member of the Jehovah Witnesses?
A. Yes, sir.
Q. Were you arrested on July 8th, 1939?
A. Yes, sir.
Q. Mr. Bailey, what group were you in that evening?
A. The last group to leave the hall on Hanover Street.

Q. That is Odd Fellows Hall on Hanover Street?

A. Yes, sir.

Q. How did you go, if you recall?

A. On leaving the hall on Hanover Street, Odd Fellows Hall, I proceeded as the last one in that group down Hanover to Elm, left on Elm to Manchester, crossing Elm Street at Manchester, turning right on Elm to West Merrimack.

Q. Oh, how many were in that march?

A. Twenty-five.

[fol. 97] Q. As the marchers left the hall, whether or not you saw them go out onto the street?

A. I was instructed to space those marchers as they left the hall.

Q. What instructions did you give to those marchers?

A. That they should remain fifteen to twenty feet apart as they marched on the streets of this city.

Q. Whether or not those marchers were carrying banners?

A. They were carrying banners and placards. Each one had either an upright, as this here, or one of these sandwich signs. The sandwich signs were only on one side, in the front of those that were marching, because there were not enough to make sandwiches out of them.

Q. So some of them had the sandwich signs only on front?

A. Yes.

Q. And not on back?

A. That is true.

Q. Now, did you have anything else at that time which you were carrying?

A. Yes, sir.

Q. All the marchers? What did they have?

A. They had handbills announcing a meeting to be held on Hanover Street on Sunday evening.

Mr. Broderick: If it please the Court, the respondents are not charged with handing out handbills.

Mr. Barnard: They brought that in, that they were handing out handbills and they were taken away from them by the police, and they are in court but are not introduced. I would like to introduce one.

Mr. Broderick: May I inquire the purpose, having in mind the issue involved?

Mr. Barnard: Based on the ground they were brought in by the state, with the other banners and placards, and showed to the jury, but not told what the contents was.

The Court: How do you claim they had anything to do with a parade on Hanover Street or whether or not there was a parade?

Mr. Barnard: It is my understanding there is several indictments here or appeals from other parts of the city; not only Hanover, but Merrimack, Elm, Elm and Concord, Elm and Lowell and other places.

The Court: That is right, of course, but how do you say these handbills have anything to do with whether this was or was not a parade?

Mr. Barnard: On the ground they were having an information march informing the public of a meeting to be held the following day at Odd Fellows Hall, which was their way of disseminating that information.

The Court: Do you offer that as an excuse of what they were doing?

Mr. Barnard: Not as an excuse. These are what the police took from the defendants, the same as the sandwich signs and banners they have had marked as exhibits.

Mr. Broderick: There is already testimony in as to the sandwich signs.

[fol. 98] The Court: I don't see how it has anything to do with this case, Mr. Barnard.

Mr. Barnard: May we save our exception on it?

The Court: You don't offer it as a reason or excuse why the participants in this demonstration did what they did do?

Mr. Barnard: We offer it only as a reason to show the State has taken from these defendants here on the street certain placards and sandwich signs, which they have introduced to this jury as a part of the case. Also the State's witnesses stated they took these pamphlets away from them because they said they were spreading them on the street.

The Court: Well, they are not charged with the violation of any law or ordinance in regard to distributing literature.

Mr. Barnard: True, but they are not charged with carrying signs, which they have in as part of their case.

The Court: The signs may be admitted on the question of whether or not they were parading.

Mr. Barnard: For the same reasons these pamphlets seem to us to be essential also.

The Court: You may put it in if you want to.

Q. Is this a sample of the pamphlets you were carrying?

A. Yes, sir.

Mr. Barnard: I offer this as Defendant's Exhibit I.

Q. Now, Mr. Bailey, is that one of the pamphlets which the marchers were carrying on the evening of July 8th?

A. Yes.

Q. What does it say?

A. Brought to your own neighborhood, the speaker Judge Rutherford. Subject, serially, Fascism or Freedom, Face the Facts, Fill the Earth and others, by electrical transcription. Come to Kingdom Hall of Jehovah's Witnesses, I. O. O. F. Bldg., 83 Hanover Street, Sunday July 9th, 7:08 P. M. Inviting you, your family, your friends. Free. No collection. Educational campaign by the Watch Tower.

Q. And on the back of the pamphlet, will you read that?

A. Germany, Russia, Italy banned it. Read Enemies, today's most widely circulated book, aside from the bible itself. Over two and one-half million copies out, still going out, many languages. 384 pages, color illustrations, cloth-bound, gold stamped, educational Christian, but not religious. The Watch Tower, 117 Adams Street, Brooklyn, N. H., Please send me a copy of Judge Rutherford's latest book, Enemies, postage prepaid by you. Enclosed find a contribution of 25 cents to aid in your educational campaign. Name, Street, City, State.

Q. Now, Mr. Bailey, as the marchers left the hall, it was your duty to instruct them and see that they marched fifteen to twenty feet apart?

Mr. Broderick: I object to what his duties were.

[fol. 99] Mr. Barnard: He made that statement.

The Court: Then you don't need to ask again, unless you expect a different answer.

Q. What did you do that night at the hall prior to going out on this march, and after you got out on the street?

Mr. Broderick: This was before the march. I pray Your Honor's ruling as to what took place before the march.

The Court: This was in preparation of the march.

Mr. Broderick: Before they left the hall and before they reached the street.

Q. Will you state to the jury what you did?

A. As the group came down the stairs from the hall, I was in the lower corridor, and as each one came down, beginning with the leader, I told them that they were to stay

from fifteen to twenty feet apart as they traveled on the streets of the city. After the last one had gone out, I took my place at the rear of the line and followed that line down Hanover Street.

Q. Now how near was the person in front of you to you as you marched down Hanover Street?

A. Approximately twenty-five feet.

Q. Whether or not you could see the second person in front of you?

A. Yes, sir.

Q. And how far was he or she from the person that was directly in front of you?

A. Twenty feet.

Q. Whether or not you could see the third person ahead of you?

A. Yes, sir, I could.

Q. Whether or not you noted when they turned south on Elm Street, as you stated, whether or not you could see as the line progressed the distance the marchers were ahead of one another?

A. I could see they were spaced in such a manner that they were not near each other, at no time being nearer than ten feet.

Q. I understood you to say you proceeded south on Elm Street to where?

A. The corner of Manchester Street.

Q. At Manchester Street what was the line of march then?

A. Across Elm Street to the west side of Elm Street.

Q. Now, as you, being the last one in that line of march, got to the corner of Hanover and Elm Street, whether or not you were able to see the marchers as they proceeded down Elm Street to Manchester Street and across Elm Street?

A. I was able to see that march, the whole of it, during all the time I was on Elm Street.

Q. When the marchers were crossing Elm Street from the east side of Elm Street to the west side of Elm Street, what was the distance, if you can remember, the approximate distance between the marchers as they proceeded?

A. As they were crossing Elm Street at Manchester Street, I am not going to try to say the distance, but in the street the most marchers that were in the street at one time were five.

[fol. 100] . Q. They were approximately how far separate from one another?

A. Not less than ten feet.

Q. Now, Mr. Bailey, if you know, when you came onto Elm Street yourself where was the head of the line, if you know?

A. I would not want to state just exactly where the head of that line was.

Q. What is your best recollection as you remember it now?

A. That as I came onto Elm Street already some of the first marchers in that line were crossing Elm Street at Manchester Street.

Q. Whether or not there were any of them on the west side of Elm Street proceeding south, that you saw?

A. I can't remember if there were any across the street.

Q. Who was the head of that line of march?

A. As it left the hall Milton Lieby was leading that information march.

Q. What kind of a banner or placard was he carrying?

A. I know that he had one of these sandwich signs in front of him. He didn't have one in back. I don't know whether he had a banner or not, like this:

Q. Now, when did it come to your attention that the line in which you were in was arrested?

Mr. Broderick: I pray Your Honor's judgment.

The Court: By "when" do you mean the place or the time.

Mr. Barnard: The place.

A. I had some idea that this might be taking place.

The Court: The question was where.

A. That is what I was coming to. When I crossed the street at Manchester Street.

Q. What called that to your attention?

A. The fact that this officer that I saw stop an automobile and ride down on the running board to where the head of the line would be was going down that way. I thought he was going down for the purpose of stopping that information march.

Q. When that officer, on whatever vehicle he might have been, went by you, where were you?

A. On the north side of Elm Street, before crossing at Manchester Street.

Q. Do you mean the east side of Elm Street? Elm Street runs north and south.

A. It was on the east side.

Q. That was the side you turned on in coming down Hanover Street?

A. Yes, sir.

Q. So that when the officer went by you the line was split, because there were lines on both sides of that officer. Is that true?

A. That is true.

Q. How many of the marchers were in the street at that time?

A. I should say three when that machine went by.

Q. What next, if anything, attracted your attention at the corner, if you know, at the corner of Elm and West Merrimack Street?

A. I know the head of the line was stopped there, because [fol. 101] being the last one in that information. march I was held up almost opposite Manchester Street on the west side of Elm Street, because the march was standing, waiting at that point.

Q. So that you were across Elm Street opposite Manchester Street at the foot of the march when the head was stopped. Were the marchers then stopped?

A. Yes, sir.

Q. What was the distance at that time between the marchers whom you could see?

A. I could only see those who were near me, and I would say from eight to ten feet, as we waited there, being held up by the fact the head of the line had stopped marching.

Q. How many persons in that march could you see at that time?

A. I couldn't see the persons so they could be counted. I could see the uprights, the banners such as this, as they were standing stopped on the sidewalk.

Q. Whether or not they were close together?

A. They maintained a distance of eight to ten feet as they were waiting.

Q. You say there was about twenty-five in that particular march?

A. Yes, sir.

Q. Now, Mr. Bailey, what was the condition of traffic at the time you left Odd Fellows Hall, going down to Elm on Hanover, out onto Elm, across Elm Street to the west side of Elm—what was the condition of traffic?

A. The traffic that Saturday night, that was July 8th, was very light in the city of Manchester.

Q. What was the condition of traffic directly at the corner of Hanover and Elm Streets as you approached and came around the corner?

A. The pedestrian traffic was such we were able to pass through without inconveniencing anybody on the sidewalk as we came around Hanover onto Elm Street.

Q. At any time during that march from the hall to the west side of Elm Street, across Elm Street to the west side, was there at any time any large crowd?

A. There was no large crowd on the streets in that vicinity.

Q. Whether or not you marchers held up pedestrians at all?

A. I did not see any pedestrians being held up by this information march.

Q. Whether or not the marchers could walk along in single file and practically in a straight line without interfering with the pedestrian public, or the public interfering with them?

A. They could march in a straight line and not interfere with the public on the sidewalks.

Q. Mr. Bailey did you after you found the line was held up when you were on the west side of Elm Street, whether or not you remained at the foot of the line until the line started?

A. I did.

Q. That was practically opposite Manchester Street?

[fol. 102] A. It would be just below what would be opposite Manchester Street on Elm Street.

Q. Approximately how long were you waiting there?

A. About three minutes; two or three minutes, I would say.

Q. Then the line started?

A. Yes, sir.

Q. And you started with it?

A. Yes, sir.

Q. Now, if you know, what happened after that, after you started?

A. I could see this Mr. Hickey as he escorted Mr. Cox across Elm Street at Merrimack Street going into Merrimack Street. I could also see Mr. Lieby preceding him up that street, and the other marchers following across in line.

Q. Whether or not anyone accompanied you?

A. Not until I was either across or partially across Elm Street, then I think the name of the gentleman is Mr. Ahern —he walked with me from there to the station.

Q. Whether or not the distance apart of these marchers after they were held up by the police—what was the distance between them at that time as compared with the distance before they were held up by the police?

A. Do you mean while marching?

Q. Yes, I mean while marching.

A. As they proceeded up Merrimack Street toward Chestnut Street the line was more compact, nearer together, than at any time in that march from Hanover Street.

Q. Approximately how far were each of them as you saw them proceeding?

A. From eight to ten feet apart.

Q. And what was the condition of traffic as you crossed Elm Street going from west to east—what was the condition of traffic at the corner of Merrimack and Elm Street?

A. As the line crossed over at Merrimack Street crossing Elm, going up Merrimack Street in that direction, while were were crossing there the march was held up by the traffic light and the entire line passed—while that light was on and as we were in the street the marchers did not have to stop even while the light changed because the march was allowed to continue by the officer even while the light was against them, I did see coming down Elm Street there were probably seven or eight cars waiting the last few seconds it would take to cross there.

Q. What was the condition of pedestrian traffic on Elm Street at the corner of Merrimack and Elm?

A. At the time the march had been held up by the police officer, Mr. Hickey, the marchers as they stood alongside the west side of Elm Street were looking in the windows and as they stood there different people stopped and looked at them, made some remarks and wondered perhaps why they were there. I would say at that spot was perhaps more people than at any other spot in this entire march of the [fol. 103] information march I was in.

Q. That is while you were being held up by the two officers. Approximately how many people were there at the corner of Elm and Merrimack Streets?

A. I don't know just how many people there were at the corner; from the point where I was standing, which would be back toward the opposite side from Manchester Street, I would say there might have been fifty or sixty people watching this line at that place.

Q. You proceeded with Officer Ahern to the station?

A. Yes, sir.

Q. What was the condition of traffic on Merrimack Street after you left Elm Street, going east on Merrimack and north on Chestnut Street toward the station?

A. There was very little traffic on Chestnut Street, very few machines and practically no pedestrians at that time. I noticed that particularly because beyond the police station there were people, but not between the corner of Merrimack Street and the front entrance to the police station.

Q. Whether or not there was any trouble with your seeing the marchers going up Merrimack Street?

A. No there was not; it was in plain view.

Q. Approximately, if you can tell, how near were they together?

A. As I stated before, approximately eight to ten feet as they were standing or marching on Merrimack Street.

Q. Mr. Bailey, what time if you know did this group leave the Odd Fellows Hall to go on this information march?

A. They were all on the street by five minutes after eight.

Q. Whether or not you know approximately the time they were apprehended?

A. Do you mean stopped at the corner of Elm and Merrimack Street-?

Q. West Merrimack, yes.

A. About fifteen minutes afterwards.

Q. That would be about twenty minutes past eight?

A. That is right.

Q. Whether or not you know the time that you entered the station?

A. Twenty-five minutes after eight.

Q. Whether or not you know whether you were the last group that was arrested, the group you were in?

A. Of my own knowledge I wouldn't have known at that time.

Q. Whether or not after you were brought to the station were there any other groups that came in to your knowledge?

A. No, sir.

Q. You were here yesterday, were you not?

A. Yes, sir.

Q. Do you remember the officer testifying you were at the station at 7:45 P. M. on that day?

A. Yes, sir.

Q. And at the hour of 7:45 your group of marchers that you were in had not even left the hall, had they?

A. No, sir.

Q. Whether or not you had any instructions as to where [fol. 104] you should go that evening?

A. I had no knowledge of where this information march that I was in would go.

Q. I understand then that you were following the leader in front of you?

A. I was following the person in front of me. Yes.

Q. At that time whether or not you had a banner or a placard?

A. I had one of these and only one. That was on front.

Q. Now, Mr. Bailey, I show you defendant's Exhibit C and ask you if you know that person carrying that banner with Officer Hickey?

A. That person is myself.

Q. I beg your pardon, with Officer Ahern. You were the last person in the group?

A. Yes, sir.

Q. I show you Defendant's Exhibit E, as to whether or not you can identify any person in that group?

A. I can.

Q. And which one?

A. One, two, three, and the man here that has this upright. Four.

Q. Who is this first person?

A. Vera Burnham.

Q. Whether or not she is the first marcher shown in that picture?

A. Yes, sir.

Q. Who is the person carrying the upright banner, if you know?

A. Chester Burnham.

Q. And these were in the march which you were at the rear of?

A. They were a part of the information march that I was at the rear of. Yes, sir.

Q. I show you Defendant's A and ask if you can identify anyone in that picture?

A. Yes, sir.

Q. Who?

A. The leader, first man in that group, Milton Lieby. I see here also Officer Hickey and Mr. Cox is talking to him.

Q. Now, is the banner which Mr. Milton Lieby is carrying, and he being ahead of Officer Hickey and Mr. Cox—did he have another banner on his back?

A. He did not.

Q. He had one in front which you see here?

A. Yes, sir.

Q. I show you Defendant's Exhibit B and ask if you can identify any person there?

A. The first three persons I have just identified on the other picture.

Q. So that person walking in front of Officer Hickey and Mr. Cox is Milton Lieby?

A. It is.

Q. It does not show a banner on his back?

A. He had no banner on his back.

Q. Whether or not, Mr. Bailey, did you see those three people walking across Elm Street at that location?

A. I did.

Q. Approximately what was the distance between them?

A. About ten feet; probably more than that.

Q. Whether or not, Mr. Bailey, there was anything said to you about closing up the ranks, or did you hear anything said?

A. Officer Ahern was very insistent that we take up less space and get together. He instructed me to step along. He also instructed me and the man in front of me to give [fol. 105] out no more handbills, to stop it.

Q. Whether or not you were in such a position that you could see Defendant's Exhibit H. at the time the marchers were entering the police station?

A. Yes.

Q. Where were you at that time?

A. I was crossing Chestnut Street directly in front of the police station, almost in front of the police station.

Q. What was the distance between the people, the marchers from the police station down to where you were at the corner of Merrimack Street?

Mr. Broderick: Don't those pictures speak for themselves?

The Court: I was wondering if the witness could see anything in the pictures that the jurors couldn't see.

Mr. Barnard: Our stand is that the march after the arrest was the same as before.

The Court: You are speaking of the pictures. They are in as evidence. It is for the jury to say what they show.

Mr. Barnard: That is true, but I am identifying them through this witness who was there and who knew the facts, that is all. That is all.

Cross-examination.

By Mr. Broderick:

Q. You say you are from Lowell?

A. Yes.

Q. You are a graduate of the International Bible School Association?

A. No. I am not a graduate of anything. I only went one year in High School.

Q. And you are a duly authorized minister?

A. Yes, sir.

Q. You say during all the time of this procession, or information march if you will, that at no time did the marchers, at no time was the distance any less than ten feet between the marchers?

A. I made a statement to Mr. Barnard that after the officer stopped us we were only eight feet apart.

Q. Only eight feet?

A. Yes.

Q. You wouldn't say less than eight feet?

A. No, sir.

Q. In order to participate in the parade, all marchers would have to leave the I. O. O. F. hall on Hanover Street?

A. All the marchers in the information march I was in did that.

Q. And all the other marchers?

A. I don't know about all the other marchers.

Q. All the marchers in your group did in fact march on Hanover Street?

A. Yes, sir.

Q. Do you want the court and jury to understand that on this Saturday night, July 8th you were able to cross Elm Street without the slightest interruption of pedestrians?

A. Will you repeat?

Q. Do you want the jury to understand on this night, July 8th, your group was able to cross or go south on Elm Street from Hanover on Elm Street, without the slightest hindrance?

A. As far as pedestrians are concerned?

[fol. 106] Q. Yes, as far as pedestrians are concerned.

A. Yes, sir.

Q. You are familiar with the streets of Manchester?

A. I am in the center of town; I would get lost easy outside of the center.

Q. Do you mean you would get lost on streets other than Elm Street?

A. Not necessarily.

Q. How familiar are you with the streets in Manchester?

A. I think I could find my way around, but I don't know any but the main streets.

Q. You don't visit Manchester frequently?

A. Yes, I would say a half a dozen times in a year's time.

Q. The pictures introduced here were introduced by one of Jehovah's Witnesses?

A. They were taken by Mr. Duncan. I saw him take at least one.

Q. You wouldn't say there was a space of eight or ten feet there in that picture—you say even after the arrest the space was not less than eight feet—that is true, isn't it?

A. Yes.

Q. From that picture, introduced by the Jehovah Witnesses would you say there is a space of three or four feet, and not eight feet?

A. At these Jehovah Witnesses that are marching here we are looking at an angle in this picture. I would say eight feet between those that are the nearest together.

Q. Do you want the jury and the court to understand from this picture itself the distance between the marchers is eight feet?

A. Yes, sir.

Q. Based on this picture?

A. Yes, sir and in some cases more.

Q. And in some cases is probably less, and the same goes with this picture?

A. No.

Q. Not less than eight feet?

A. Yes.

Q. What do you say after seeing that picture?

A. There is one person here, a little child that is following its mother, that I would say is about five feet beyond its mother.

Q. You are giving in to three feet?

A. No, sir.

Q. All right. Skip the child. Following the child what would you say the distance is between the others?

A. About eight feet.

Q. You want that also to go as eight feet?

A. Yes, sir.

Q. Well, sir, would you say eight feet in that picture?

A. That is the Witnesses as they are entering the police station. They were not eight feet apart.

Q. You will agree as far as this picture is concerned that they are not eight feet apart?

A. Yes, sir, on the steps of the police station.

Q. Would you say the traffic that night was any greater than it was this afternoon, or before you went into the court house?

A. My honest opinion is when I was out to lunch this noon time the traffic was about the same as it was on Saturday evening of July 8th.

[fol. 107] Q. What time did you go to lunch?

A. Between half past twelve and two o'clock, to be exact.

Q. Do you want the court to understand the traffic was as great that night as between 12:30 and 2 o'clock today?

A. Yes.

Q. Having in mind Hanover Street?

A. Yes, sir. I was on Hanover Street.

Q. You took particular notice of the people congregated at the corner of Merrimack and Elm Street?

A. I had to. I was waiting for this information march to move after being stopped by an officer.

Q. Yes.

A. I was looking, not only at the marchers and the people, but in the windows of the stores.

Q. There was approximately sixty people at that corner?

A. There was just twenty-five.

Q. I thought you answered that at the corner of Elm and Merrimack Streets there was between fifty and sixty people congregated?

A. I thought you said in the march. From where I was standing to the corner of Merrimack and Elm Street I would say there was approximately between fifty and sixty people.

Q. You don't regard that as an obstruction of traffic, with fifty or sixty people, with marchers coming single file, you don't regard that as an obstruction?

A. There was no obstruction.

Q. You paraded?

A. I was in the information march.

Q. We will call it an information march. Did you have a license to march that night?

A. No, sir.

Q. Did you carry a banner?

A. I carried one of these, wearing it in this fashion (holding sandwich sign in front of himself).

Q. You knew of a previous arrest that night?

A. I was not to my own knowledge sure of anyone having been arrested that night of Jehovah's Witnesses.

Q. Did you confer with Mr. Cox before the parade, sir?

A. I don't remember talking to Mr. Cox. I saw him but I don't remember talking with him.

Q. Did anyone inform you before you paraded that the Witnesses didn't have permission to parade?

A. No one informed me.

Q. Did you know they did not have a permit to parade?

A. Yes, sir.

Q. And still you marched?

A. Yes, sir.

Q. Are you the man who applied at the City Hall for a permit?

A. No, sir.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. Mr. Bailey, just why were you in this march?

Mr. Broderick: Just a second, please.

The Court: Is this what you were going to agree to?

Mr. Barnard: Yes, I will withdraw it. That is all, Mr. Bailey.

[fol. 108] JOHN KONIDES, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. John Konides.
Q. Where do you live?
A. 22 Green Street, Manchester, N. H.
Q. What is your business?
A. I am a minister of the gospel, one of Jehovah's Witnesses.
Q. Whether or not you participated in a march of Jehovah's Witnesses in Manchester on July 8th, 1939?
A. I do participate in that information march.
Q. Where did you leave from?
A. I leave from Odd Fellows Building, coming down to Elm Street, and I turn to the north on Elm Street, across Hanover. Then I turn up Amherst Street, continue up to Chestnut Street. At Chestnut and the corner of Amherst I met Officer Ahern I believe is the name.
Q. Whether or not you were leading that march? Were you at the head of that march?
A. I was the head of that group, yes.
Q. Where did Officer Ahern meet you?
A. On Amherst Street and Chestnut, just a few steps down from Chestnut, around the Public Service machine shop. I believe around there.
Q. That night you did not parade any further than Amherst Street?
A. Yes, I do. After the officer question me what I am doing, I answer, I say I give information of bible lecture which is going to be held the following day. He says, all right, that is good boy. He said, proceed and be good boy.
Q. After the officer met you what did you do?
A. I continue to cross Amherst and go up on North Chestnut Street.
Q. Mr. Konides, I show you a picture cut from the Manchester-Leader under date of July 10, 1939. Whether or not you can identify anyone in that picture?

A. I identify myself.

Q. Which one is yourself?

A. The front one.

Mr. Barnard: I offer this newspaper picture as Defendant's Exhibit J.

Q. That picture was you leading this group?

A. Yes, sir.

Q. If you know, where was that picture taken?

A. That picture was taken right in Chestnut Street on what is the space there, on the park coming south on Chestnut Street.

Q. Between the parks?

A. Between the parks.

Q. Who is the person directly back of you?

A. By name he is Changeris.

Q. Whether or not you were picked up by Officer Ahern or stopped by Sergeant Austin?

A. No, I didn't get picked up by Officer Ahern. He told me to proceed and be good boys. We continue to go on Chestnut and Amherst, on Concord by Salvation Hall to Elm Street. Then I turn on Elm and continue on Lowell [fol. 109] Street, to the back street of Lowell. I don't know the name. Sergeant Austin come there with cruising car.

Q. So that you were picked up in the first instance by Officer Ahern, or stopped by Officer Ahern on Amherst Street?

A. Not picked up. Stopped and questioned.

Q. Then you continued?

A. Yes, then I continued.

Q. You continued and went back to Elm Street?

A. No. Continue on Chestnut. Concord down. Up Elm. Turn up to Public Service Building on Lowell.

Q. What happened there?

A. As far as the back street there. The name I don't remember. The cruiser car come. The officer wave us to stop. I am the head of the group and I did stop. He come out and ask me what I am doing.

Q. What if anything did the officer, Sergeant Austin say to you?

A. He asked me if I have permit to do this work because I have placard. I says no I didn't have permit. To my knowledge the committee is going down police station. After they come back they let us to start marching, so I do.

Q. What instructions did the officer give you?

A. The officer ask me if I know where is police station. I say, yes, I know. He say, take your boys and go to police station, so I obey orders and go down.

Q. How did you go?

A. I proceeded to go on Lowell to Chestnut and continue where is the park and continue to march to the police station.

Q. This picture you identified is when you were coming down Lowell to Chestnut Street, between the two parks or commons?

A. That is right.

Q. You went to the station without being accompanied by an officer?

A. I went all alone with my group.

Q. Now, Mr. Konides, what was the condition of pedestrian traffic as you came down Hanover and went on Elm Street? What was the condition of traffic?

A. It was very light on account of hot weather. Myself familiar with City of Manchester, I am living here twenty-nine years, I was disappointed because we had no crowd to see our advertising of the committee. I see some people on Hanover Street. I see a few people by Puritan Confectionery Store. They say a few remarks and we pass along.

Q. What was the condition of pedestrian traffic as you moved north on Elm Street from Hanover Street?

A. Light enough. A few people stay by the drugstore.

Q. When you came from Hanover down onto Elm, and proceeded north to Lowell, what was the condition of traffic on Elm Street, from the location where you came back from Amherst Street?

A. In Amherst Street there wasn't so much people, ex- [fol. 110] cept four or five standing by Manchester-Leader reading the news.

Q. What was the condition on Elm Street as you proceeded north toward Lowell Street?

A. Light enough. Not so heavy.

Q. Have you any idea how many people you passed going up Elm Street leading the marchers?

A. From the starting point up to the end?

Q. From the time you met Officer Ahern and proceeded back to Elm, and on Elm up to the time you were stopped by the officer.

A. After I was left by the officer, we don't meet no person on Chestnut Street, just a few on Concord, then I turn on Elm Street. On Elm Street was few enough.

Q. Have you any idea how many were on Elm Street?
A. From Concord up to Lowell was not more than fifty eople. At the Public Service we find no resistance because eople were not on the corner there.
Q. Whether or not you know the distance your people ere marching between one another as you proceeded leadg this group.
A. As I started from the hall?
Q. Before you got to Lowell Street, before you were opped by the officer.
A. Well, I was keeping my distance almost fifteen feet. f course I didn't know the end of the group because I can't ok on the back.
Q. Did you notice as you came across the common to Conrd Street, did you notice the distance between those folwing you at that time?
A. I know the nearest person behind me was far enough, ut so far as the whole group, I don't know.
Q. How far could you see back?
A. Well, once in a while I look back, if the whole crowd llows me, because there are a few strangers from other wns in the group. I notice my distance was about fifteen et. The next was twelve or fourteen and so on, until the nd I don't know.
Q. Now, Mr. Konides, you had been arrested when that icture was taken, you had been stopped by Sergeant Austin nd told to go to the station?
A. That is all he did Yes.
Q. Approximately what is the distance between the marchrs that are following you, as you saw them coming up owell Street and turning onto Chestnut Street?
A. Yes. Well, according to this picture the distance is ay I say more than fifteen feet.
Q. Do you think that—have you any knowledge as to any ther part of the line except the first part of the line, as to ow near the marchers were together?
A. In my group?
Q. Yes, in your group.
A. At the end of the group I don't know.
Q. Do you know in the middle of the group?
A. It was about twelve feet apart.
[Vol. 111] Q. Before you left the hall were you instructed hat to do?

A. Yes, we been instructed to keep distance fifteen to twenty feet, and we try if possible we can to keep these and give chance to the people to read signs on us. If we was too close there is not too much chance for the people to read placards.

Q. What, if you know, is the reason for this information march as you call it?

A. The reason for this information march is this: to inform the people of a bible lecture being held in Hanover Street the next following day.

Q. And if you were marching close the information would be of no value?

A. We go out to march, not to show ourselves, but to advertise the meeting which is most important for the public.

Q. Whether or not all your people were carrying some sort of banners or signs?

A. Yes, all they take different banners. I carry two, back and front, of this Fascism or Freedom, and some they carry the upright banner.

Q. The one you carried was on front and back?

A. Yes.

Q. After Sergeant Austin had stopped you, you immediately proceeded to the police station?

A. Well, yes, slowly we march to the station.

Q. What was the condition of traffic as you came down Chestnut Street from Lowell Street going toward the station?

A. The condition of traffic was nothing at all in my estimation. We find not any resistance by cars or pedestrians. The way was nice and clear.

Q. So there were practically no people on Chestnut Street when you were coming down?

A. From Lowell to Amherst through the common was no people.

Q. What was the condition of traffic at the corner of Chestnut Street and Hanover Street when you reached there?

A. At Chestnut and Hanover there was few people there crossing, but they don't interfere at all.

Q. Did your group interfere with them at all?

A. No, not at all.

Q. How many people do you think there were at the corner of Hanover and Chestnut Streets when you reached there?

A. At Hanover and Chestnut was not people stayed, but they walked, very far apart each one of them going down Hanover Street, but there was no gathering at the corner.

Q. There was no gathering at the corner?

A. None.

Q. What time did you leave Odd Fellows Hall?

A. We leave Odd Fellows Hall twenty minutes past seven.

Q. If you know, what time were you stopped by Sergeant Austin?

A. Well, I don't remember the time because I don't look at the time, but I figure we marched on those streets up [fol. 112] and down, maybe that takes about twenty minutes, because we walked in a nice way.

Q. In this march you had you did not stop at all except for lights?

A. No, they don't happen to have traffic lights.

Q. There was no traffic lights against you?

A. No.

Q. Were you obliged to stop for pedestrians or automobile traffic?

A. Not at all.

Q. The only time you had to stop was when Officer Ahern stopped you on Amherst Street?

A. Just a few minutes.

Q. And again when the officer stopped you on Lowell Street?

A. That's right.

Q. Whether or not you know the time you reached the police station?

A. Well, no I don't remember.

Q. Having left at twenty minutes past seven can you give us some idea of the time you were on the street before you arrived at the station?

A. What is that question?

Q. Can you give us some idea of the time from the time you left Odd Fellows Hall at 7:20, can you give some approximate time you were out on the street before you reached the police station?

A. What I understand—When I march it is twenty minutes past seven. It takes twenty minues to half an hour until they stop me. Then we continue to police station. Probably that takes ten minutes more or fifteen.

Q. Then it was thirty to thirty-five minutes from the time you started?

A. Yes, maybe, but I don't look at the watch, to tell the truth.

Q. And twice you were stopped by the police?

A. Yes.

Q. Once by Officer Ahern?

A. Yes.

Q. He did not send you to the police station?

A. He told me to proceed. I told him I am advertising bible lecture. He says that is good job, proceed but be good boys.

Q. And you proceeded on your way?

A. Yes.

Q. When you met Officer Austin it was a different story?

A. Not so much story. He smile. He say what you doing. I say giving this advertising for meeting. There was some strangers here in town. That is why he asked me if I knew where is the station. I say, yes I know. That is when he say you go down with your boys.

Mr. Barnard: That is all.

Cross-examination.

By Mr. Broderick:

Q. You say you are a minister?

A. Yes, Jehovah's Witness.

Q. What college did you graduate from?

A. I don't have to graduate from any college to know the bible. I am graduate of the Watch Tower Bible.

Q. And you are Jehovah's Witness?

A. I am Jehovah's Witness.

Q. Proceeding that day you had a sign and banner such as this?

A. Not a banner. I had a sign like this.

[fol. 113] Q. I see. Some of the members had signs like these?

A. Yes.

Q. Officer Ahern saw your banners?

A. Yes.

Q. He saw your banner and after he saw the banner he said go ahead, proceed and be a good boy?

A. He did.

Q. Yes. And you marched, each member of the group keeping approximately fifteen feet from the others?

A. Well, according to the picture.

Q. That is your honest opinion, based on this picture, that the distance was fifteen feet?

A. Yes, sir.

Q. And regardless of the picture?

A. Well, I measure that. I know myself I was very far apart.

Q. You walked up by the Public Service Company?

A. Yes, we turn on that corner up the street.

Q. And the streets were practically deserted that day?

A. Deserted?

Q. Would it be fair to say the public streets in Manchester were practically deserted? Do you know what deserted means—hardly any people on the streets?

A. There was some people but not heavy traffic.

Q. It was light traffic?

A. Yes.

Q. So light you were disappointed?

A. Yes.

Q. You heard your associate say the traffic on the streets that night was practically the same as this noon at twelve o'clock, between twelve o'clock and two o'clock?

A. I hear what he say but I was not out at that time.

Q. You were not out at twelve this noon?

A. No.

Q. Would you say in front of the Public Service Company building there was approximately fifty people?

A. No.

Q. You wouldn't say that?

A. No.

Q. I thought you told Brother Barnard there was fifty people in front of the Public Service Company?

A. No, but from Concord Street, that is a busy place anyway, on that side of the street was fifty people.

Q. From Concord Street to Amherst Street?

A. Yes.

Q. One block?

A. Yes.

Q. There was fifty people?

A. Walking up and down.

Q. Do you regard that as light traffic?

A. Well, I don't interfere with them and they don't interfere with me.

Q. This was Saturday night?

A. Yes, this was Saturday night.

Q. Do you know of any Saturday night when you saw the traffic lighter?

A. It was so hot. It was a peculiar hot day. People were looking for cooler spots.

Q. On account of the hot weather it was a peculiar sort of day, there was less people on the streets that day than for the last twenty years that you have been a resident of Manchester?

A. There was not so many as we expected to meet to advertise the meeting.

Q. Are you a citizen, Mr. Konides?

A. Yes, I am a citizen.

[fol. 114] Q. By the way, you admit participating in a parade?

A. I admit marching in this Jehovah Witnesses information march.

Q. All right. We will call it an information march. You started from Hanover Street?

A. Yes, we started from Hanover Street.

Q. You carried a placard?

A. Yes, I carried a placard.

Q. Did you have a license?

A. No, I did not have a license.

Mr. Broderick: That is all.

Mr. Barnard: That is all.

DEFENDANTS' OFFER TO PROVE FACTS

Mr. Barnard: The defendants offer to prove the following facts:

The Jehovah Witnesses are followers of Christ Jesus, each of whom is an ordained minister of the Gospel of God's Kingdom and sent by Jehovah to do his work and to preach the Gospel as set forth in the Bible at Isaiah 61; 12; Isaiah 43; 10 to 12 and Matthew 24:14. Jehovah's Witnesses are compelled to obey God rather than men as stated in Acts 3:23; Acts 4:19 and Acts 5:29.

In obediance to God's Commandments Jehovah's Witnesses preached the gospel and worshiped God by calling on people at their homes and by group meetings. They exhibit to the people the Message of the Gospel in printed forms such as pamphlets, books, placards and other printed matter and by recorded lectures.

The work is entirely charitable and is prompted by an unselfish desire to teach God's word and to do good to all mankind. The directing organization is the Watch Tower Bible and Tract Society chartered to disseminate Bible Truths.

A march for purposes of information is directed by Joshua 6:15.

The phrase "serve God and Christ the King" to Jehtovah's Witnesses means to follow the lead of Jesus Christ in obeying the word of All Mighty God which is given to man as a guide in the Holy Bible.

The phrase "religion is a snare and a racket" means to Jehovah's Witnesses that religion and christianity are opposed to each other and that christianity is not a religion on the basis of James 1:26, 27.

The Court: The offer is denied, because the suggested facts, if true, have no bearing upon any of the issues in the cases on trial.

Mr. Barnard: The defendants except.

[fol. 115] Orvilla Paquette, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. Orvilla Paquette.
Q. Where do you live?
A. At present I live in Deerfield, N. H.
Q. What is your business or occupation?
A. My occupation is that of a minister of the gospel.
Q. Whether or not you were in Manchester on July 8th, 1939?
A. Yes, sir.
Q. What was the purpose of your being here at that time?

A. I was here to participate in an information march.
Q. And for whom?
A. For our society.
Q. That society is the Jehovah Witnesses?
A. Yes, sir.
Q. Where did you meet here?
A. At Odd Fellows Hall on Hanover Street.
Q. Whether or not you did participate?
A. Yes, I did.
Q. At that meeting what part did you perform?
A. I happened to be one that was first of a group going out.
Q. How many were in your group?
A. Eighteen.
Q. Whether or not any instructions were given you, or did you give any instructions at any time?
A. I was always told when we participated in an information march to keep a distance of fifteen or twenty feet.
The Court: What was the situation here?
A. The situation here was we were told to be fifteen feet apart at least.
Q. Did you go out on an information march that day?
A. Yes, sir, I did on the 8th of July.
Q. What time did you leave the hall?
A. I left Odd Fellows Hall at ten minutes to seven.
Q. Where did you go?
A. We left the hall, we turned right on Hanover Street going toward the east. I remember as going there I see one officer across Hanover Street. One was an inspector leaning against a telephone pole in plain clothes. The other was Officer Moran in Officer's clothes. As we walked there before I got to the corner I noticed the light where the officer was leaning against the pole went on red. We stopped. At least I did and I am sure the rest did.
Q. Whether or not you looked to see if the rest were stopped when you stopped for the light?
A. No, sir, I did not turn around.
Q. Later did you get a light so you could proceed?
A. Yes. We stopped there. There was not more than one or two marchers went by. The light went on green. We started to cross the street. As I put my foot on the curbstone to cross the street Officer Moran said, have you got a permit? First he said, what are you doing? I said, I am out informing the people of a bible lecture at Odd

Fellows Hall tomorrow evening. He said, have you got a [fol. 116] permit? I said, no, am I under arrest? He said, no, we will have to go to the police station. We started for the station. When I got about thirty feet from the corner, I see Napoleon Isabel, he was about thirty feet from me. The officer in plain clothes had stopped him. We continued on. That is all I remember of the march.

Q. What was the condition of pedestrian traffic on Hanover Street?

A. The first two persons I saw was the two officers. I could see everything on this sidewalk. Across the street I did not look. My route was on the south side, going east.

Q. You say there was no traffic?

A. No, sir, I didn't see a soul on that sidewalk except across the street the two officers which were on that corner.

Q. Then you proceeded to the station?

A. When the officer told me we had to go and see what it was all about, I did.

Q. What was the distance between the marchers as you were arrested?

A. That I couldn't say except for myself. When I got thirty feet away I turned around and saw Napoleon Isabel was being stopped by the officer in plain clothes.

Q. Where was he at that time?

A. He was stepping on the curbstone.

Q. Do you mean the stone on the east side of Chestnut Street at Hanover?

A. I mean at the east side of Chestnut Street on the south side of Hanover Street.

Q. He was then thirty feet back of you?

A. When I was going with the officer I happened to turn to see if they were following. The officer in plain clothes started from that pole toward him and stopped him there.

Q. Did you go to the station?

A. Yes.

Q. Whether or not Mr. Isabel went to the station?

A. Mr. Isabel went to the station after we were inside probably fifteen to forty seconds. He came in with the other inspector there.

Q. Whether or not you were acquainted with all of those in your group?

A. Some of them.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. What did you say your last name was?
A. Orvilla Paquette.
Q. You say you are a minister?
A. I am a minister of the gospel.
Q. Do you admit parading on July 8th on Hanover Street?
A. I was marching.
Q. All right. You were marching?
A. Yes.
Q. Did you have a permit to do so?
A. No.
Q. Did you carry a banner?
A. Yes.

Mr. Broderick: That is all.

[fol. 117] WILLIAM JONES, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. William Jones.
Q. Where do you live?
A. 281 Auburn Street.
Q. What is your occupation?
A. Minister of the gospel.
Q. Were you at a meeting on July 8th in Manchester?
A. July 8th, yes. We gathered at Odd Fellows Hall July 8th, yes.
Q. Were you one of the participants in the march?
A. I was.
Q. Who was the person that was in the march with you, who was the one that was at the head of it?
A. Who was at the head of the march? Orvilla Paquette.
Q. That is the gentleman who just testified?
A. Yes.
Q. Where were you in that march, what part, front, back, middle or where?
A. I was fourth from the front.

Q. What was the distance between you and those who were in front of you before you crossed Chestnut Street?

A. Well, speaking of the next one in front of me, there was a good fifteen feet distance between me and that one. For the one preceding that party there was between twelve and fifteen feet, according to my observations.

Q. Whether or not while you were proceeding, and this was in the march in which Mr. Paquette who just testified was, whether or not at any time you looked back of you to see what the distance was of the others who were with you?

A. I did not.

Q. After you left the hall, what was the condition of traffic that you saw on Hanover Street, going east toward Chestnut Street? What was the condition of pedestrian traffic on the south side of Hanover Street, going east toward Chestnut Street?

A. Well, from the entrance of Odd Fellows Hall until I got to the corner of Hanover and Chestnut Street if I recollect right I passed about half a dozen persons, no more. That is going both ways.

Q. There are stores there that you passed?

A. Well, the Crown Theatre and one store and a drug-store if I don't make a mistake.

Q. Approximately how far was Mr. Paquette ahead of you when you came out of Odd Fellows Hall?

A. Over fifty feet. I didn't make any observation on that I didn't watch the leader. I watched the next one in front of me.

Q. As you proceeded east what, if anything, happened?

A. Well, I proceeded as far as the southeast corner of Hanover and Chestnut Street, where the one proceeding me was stopped by Inspector Reardon and told we could not march on the streets with those signs on and would have [fol. 118] to go to the station to see about it. Therefore I followed the one preceding me to the station.

Q. After you met the officer, what was the approximate distance between you and the person ahead of you?

A. About eight feet.

Q. Whether or not as you proceeded south on Chestnut Street could you see Mr. Paquette?

A. I didn't notice.

Q. Whether or not Mr. Paquette was carrying any sign, or had any sign on him, as he left with the police officer?

A. I didn't notice Mr. Paquette after he turned the corner and started for the police station. I noticed the one in front of me and not much more after we turned the corner. I couldn't say.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. There is a theatre as you go from Odd Fellows Hall to Chestnut Street?

A. Yes, there is.

Q. There is a restaurant?

A. There is.

Q. A drugstore?

A. Yes.

Q. A flower store?

A. Yes.

Q. And a red light?

A. Yes.

Q. The Post Office is across the street?

A. That's right.

Q. And out of all of these places of business, including the Post Office, on this Saturday night—at what time did you say?

A. Between ten minutes of and seven o'clock.

Q. Between ten minutes of and seven o'clock on a Saturday night?

A. Yes, that's right.

Q. From this theatre, restaurant, drugstore, flower store and red light and the Post Office across the street—by the way, the Post Office is open on Saturday night?

A. Yes.

Q. All you saw was six people?

A. Yes.

Q. Is that right?

A. I didn't see more than six persons.

Q. Did you march in the parade?

A. Yes.

Q. Did you carry a banner?

A. I did.

Q. Did you have a license?

A. I did not.

Q. And all you saw was six people?
A. Yes, sir.
Q. Your eyesight is good?
A. Yes, sir.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. You saw six people from the Odd Fellows Building to the red light?
A. Yes.

Mr. Barnard: That is all.

Recross examination.

By Mr. Broderick:

Q. The red light is on the corner?
A. Yes.
Q. Between the hall and the corner there is a theatre, restaurant, drugstore and flower shop and post office?
A. There is no Post Office on that side; it is on the other side.
Q. It is on the other side of Hanover Street, on the corner of Hanover and Chestnut Street?
A. I took no regard of that side of the street.
[fol. 119] Q. You didn't look on that side of the street?
A. I was looking at the side of the street I am on.
Q. Did you include the two officers in your six people.
A. I have no reference to anyone at the corner. Including the officers that would make ten or twelve.
Q. Oh, six and two make ten or twelve?
(No answer.)

Mr. Broderick: That is all.

Orrin C. Shirley, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. Orrin Shirley, Orrin C. Shirley.

Q. Where do you reside?
A. 31 Garland Avenue, Manchester.
Q. What is your occupation?
A. Minister of the Gospel.
Q. Whether or not you participated in an information march on the 8th day of July?
A. I did.
Q. In what group were you in?
A. In the first group.
Q. Where was your position in the first group?
A. The last man.
Q. Who, if you know, was at the head of that group.
A. Mr. Paquette.
Q. The one who just testified?
A. Yes.
Q. You met at Odd Fellows Hall on Hanover Street?
A. Yes.
Q. When you came out of Odd Fellows Hall on Hanover Street, Mr. Shirley, what was the condition of pedestrian traffic on Hanover Street on the south side?
A. Well, I didn't see many.
Q. Did you see anybody?
A. I saw— I couldn't swear to that. I was looking for my own self. There was people there. There must have been.
Q. How far was the person that was ahead of you marching—what was the distance between you and the next person?
A. I was surely fifteen feet behind them.
Q. Were you able to see the second person ahead of you?
A. Yes.
Q. Approximately how far was he from that person?
A. Well, pretty near the same I should think.
Q. When—whether or not you saw Mr. Paquette crossing Chestnut Street?
A. I saw something up there. Yes, I think I did. I guess I did see him cross Chestnut Street. I see the leader, yes, the head one.
Q. You were where at that time?
A. I was right at the foot of the stairs. I just got out. I didn't go no where.
Q. You were out in the street?
A. Yes.

Q. Will you state to the court and jury just what transpired so far as you were concerned?

A. Nothing more than marching. I just marched. My only object was to keep the distance apart from the people, from the other ones.

[fol. 120] Q. Did anyone stop you on the way?

A. No.

Q. Did anyone say anything to you on the way?

A. No.

Q. You were just following the person in front of you?

A. Yes.

Q. That led you to what location?

A. It led me to the police station before I got through.

Q. And the police station is not far from the corner of Hanover and Chestnut Streets?

A. No, right near.

Q. What was the condition of traffic as you reached the corner of Hanover and Chestnut Street, the pedestrian traffic both on Hanover and Chestnut Streets?

A. Not many.

Q. Did you or your associates have any trouble going across the street?

A. No.

Q. Whether or not there were many vehicles?

A. I didn't notice many.

Q. Did you see any?

A. They didn't hinder us. I wouldn't say any more.

Mr. Barnard: You may inquire.

Cross examination.

By Mr. Broderick:

Q. You live in Manchester?

A. Yes, sir.

Q. How long have you lived in Manchester?

A. Practically all my life.

Q. Do you recall any single Saturday night for the past five years, between seven and eight o'clock, when you did not see more than six people at the corner of Hanover and Chestnut Streets?

A. I never was on Hanover Street on Saturday night very often.

Q. What was that?

A. I am not very often on Hanover Street on Saturday nights.

Q. Well, the nights you were on Hanover Street?

A. Well, I have seen lots of crowds there.

Q. Do you recall ever seeing less than six people on a Saturday night at the corner of Hanover and Chestnut Streets?

A. No.

Q. As a matter of fact there are hundreds and hundreds of people on Saturday nights on that corner?

A. Yes, some Saturday nights.

Q. You paraded that night?

A. I marched.

Q. You marched, I mean. You carried a banner?

A. Yes, I had one of these, this kind (indicating sandwich sign).

Q. Did you have a license?

A. No.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. Whether or not you knew Mr. Paquette had been arrested?

A. I could see the officer as he was taking him down the street from the rear.

Q. You were in what location at that time?

A. I had stepped along some, quite a little, when I see him going down there.

Q. What was the condition of the weather that particular Saturday night, the evening of July 8th, 1939?

A. It was pretty hot.

Q. Whether or not you were in your shirt sleeves?

A. I had my coat on, but it was something terrible.

Mr. Barnard: That is all.

[fol. 121] Recross-examination.

By Mr. Broderick:

Q. Just one question. Would you say this picture represented a fair distance between the marchers, not consid-

ering the first one? Let me give you this picture. This is the marchers picture. Would you say that represented a fair marchers, not considering the first one? Let me give you this picture. *Q.* You can see the second, third and fourth man?

A. Yes.

Q. Would you say that represents approximately the same distance as in your group?

A. Well, I should think I was a little further apart than that down through there.

Q. You should think what?

A. I should think my group was a little further apart. How far would you call it from there to there?

Q. I am asking you.

A. Well, it is around fifteen feet, I should think.

Q. So you will let it go — that, referring to Defendant's Exhibit J, the distance between the marchers was approximately fifteen feet. Is that right?

A. I should think so.

Q. Referring to Defendant's Exhibit E, would you say your group, the distances in your group, were about the same as in that picture?

A. Why, I guess so. Yes, I should think it was.

Q. Yes. We are referring to Defendant's Exhibit E?

A. Yes.

Mr. Broderick: That is all.

WALTER CHAPLINSKY, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?

A. Walter Chaplinsky.

Q. Where do you live?

A. 20 Lotus Street, Dover, N. H., at the present time.

Q. Where were you living July 8, 1939?

A. 743 Lake Avenue, Manchester.

Q. What is your occupation?

A. I am an ordained minister of the gospel.

Q. Whether or not you participated in a march in Manchester on July 8th, 1939?

A. Yes, sir, I did.

Q. Where did that assemble, or where did the march start?

A. Odd Fellows Hall.

Q. That is on Hanover Street?

A. Yes, sir, 83 Hanover Street.

Q. Will you tell the Court and jury where you proceeded to.

A. Yes, sir. We left Odd Fellows Hall and walked down to Elm Street on the left hand side. We then turned north, going to Concord Street. At that corner of Concord Street we met Officer Tierney. His first words when he spoke to me, he said, do you have a permit? I said, no, we do not need [fol. 122] a permit because God's law says the gospel shall be preached, God's law is higher than man's law. He said going on the streets is not preaching the gospel. I said that it is. That is found in Acts 20:20. He was very courteous and gentlemanly. He said, you must come with me. I said, am I under arrest? He said, no, you must come to the police station and find out. I said, I will go, and I did go. We walked up Concord Street to Chestnut Street. He asked me how many more were in town. I said frankly about one hundred were marching in the City of Manchester. I told him this is to advertise a lecture concerning Fascism or Freedom, how this country is going Fascist and is about to destroy the liberty of the American people. He said can you prove that to me. I said I could, this foreign power has key men all over the world in various parts of governments. I said, likewise the city of Manchester is under the influence of this foreign power and that is why we are being arrested as christians.

Q. How far had you proceeded with Officer Tierney?

A. We walked up to the corner of Amherst Street and the street running beyond.

Q. Chestnut?

A. Chestnut, I think so. There I told this Officer Tierney it is not wise for you to take us all to the station because I am responsible for the group, in the lead, you take me alone and let the others go. Again he asked me how many are in town. I told him again there are one hundred marching in this city and they had a perfect right to do so, as we had the law of Almighty God to do his will in this christian march. He said, all right.

Q. Did you go to the station with the officer?

A. Yes, sir, I did.

Q. Did the other followers in your group come along with you?

A. No, sir, they did not.

Q. What happened to them, if you know?

A. So far as I know Mr. Arvid Moody was in back of me, about fifteen feet in back of me. We waited until he caught up to me. I told him frankly, you go back to Elm and Pearl, cross over on Pearl and go on the other side of Elm and come back on the City Hall side. He, being a stranger, didn't know what to do or where to go.

Q. After you gave him instructions you went to the station with the officer?

A. With Officer Tierney. Yes.

Q. Now, Mr. Chaplinsky, when you left Odd Fellows Hall, what was the condition of traffic on Hanover Street between the Odd Fellows Hall and Elm Street?

A. Yes, sir. The traffic there was not heavy at all. There was about thirty people on both sides of the street. I [fol. 123] marched right down to Elm Street and there in formation file I turned sharply north on Elm Street.

Q. After you turned sharply north on Elm Street, whether or not you looked back east on Hanover Street?

A. Do you mean back on the line of marchers?

Q. Yes.

A. Yes, I did.

Q. What was the distance between the marchers as you turned and looked back?

A. Fifteen to eighteen feet apart. We had definite feet apart to stand our ground and stay that distance.

Q. Whether or not you saw the last end of the group with you, which would be the last man in that group?

A. No, I did not see the last end of the group. They were still coming out of Odd Fellows Hall.

Q. How many were in your group?

A. Twenty-four.

Q. What was the condition of traffic that night after you got onto Elm Street and proceeded to Concord Street?

A. After we got onto Elm Street and proceeded to Concord Street I would say it was not very thick. There were people on the street, of course. We just marched right straight through. We didn't have to dodge traffic whatever. They merely stepped aside and looked at us from the doors of stores as we went by. There was not many.

Q. As you got to Concord Street did you look back?

A. I did look back as I got to Concord Street when the officer stopped me.

Q. How far could you see your marchers back from the corner of Concord Street?

A. Quite a distance, perhaps half the way back.

Q. As you saw them, what would be the approximate distance between one you could see?

A. As I could see, they were at least ten feet apart. Naturally as I stopped at the corner of Concord Street they came up a little and I stood there. That is myself stood there.

Q. After the officer stopped you did your people congregate around you?

A. No, sir, they did not.

Q. Whether or not the pedestrians at the corner of Concord and Elm Streets congregated around you and the officer?

A. There was about six or seven pedestrians.

Q. How long were you in conference with the officer?

A. Not more than one minute.

Q. Then you and the officer proceeded?

A. Up Concord Street.

Q. At any time from the time you were accompanying the officer, at any time after you left your group at the corner of Amherst and Chestnut Street, did you look back to your group to see how they were coming?

A. Yes, I did.

Q. What was the approximate distance between the marchers in that group?

A. They were even farther apart than when we left the hall.

[fol. 124] Q. They were farther apart than when you left the hall?

A. Yes.

Q. What was the condition of pedestrian traffic that night after you and the officer came up and across the common and came to Amherst and Chestnut Street?

A. There was nobody on the sidewalks of the common. There were a few on benches there, but none on the sidewalk or roadway there, none.

Q. The distance between your group, Mr. Chaplinsky, as you saw it prior to being stopped by the officer, was practically the same as it was after you were stopped by the

officer, except they might have congregated, come a little closer?

A. They came a little closer. I think they did.

Q. You think that would bring them how close?

A. About ten feet.

Q. About ten feet?

A. Yes, sir.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Do you admit parading on Hanover Street?

A. I was in an information march on Hanover Street.

Q. Did you have a permit?

A. Yes, I did.

Q. I mean aside from the permit you got from Jehovah?

A. No, I hadn't.

Q. Did you have a permit from the State of New Hampshire?

A. No, I did not have.

Q. Did you carry a sign?

A. Yes.

Q. Did you find Officer Tierney courteous?

A. Yes, sir.

Q. You had quite a talk with him?

A. Yes. He was a gentleman.

Q. You told him this city was under a foreign influence and that was why you were arrested?

A. I told him so. He was doing his duty as he saw it, and so was I, sent by Almighty God to give the people a warning.

Q. Are you the gentleman who called on the city officials for a permit?

A. It was not I. We did not ask anyone for a permit. I did call on Mr. Kenney for a permit, but not for the information march.

Q. Did you call upon Mr. Kenney for a permit?

A. Yes and no.

Q. Then you did deem it necessary to call upon a public official for a permit?

A. May I explain that, please? We called upon Mr. Kenney, Mr. Milton Lieby and I, a week before the information march, not for a parade, but for a sound car permit. We do

not ask any man for a permit to do what Almighty God asks us to do.

Q. You did ask Mr. Kenney for a permit?

A. We did.

Q. And he told you to come back?

A. He did.

Q. Did you go back?

A. No.

Q. You paraded without a permit?

A. We did not ask for permission for a parade.

Q. How long did you live in Manchester?

A. Four or five months.

[fol. 125] Q. Where did you live before that?

A. My business is travelling.

Q. All over the country?

A. Yes, all over the country.

Q. Preaching the word of Jehovah?

A. Yes, preaching the word of Jehovah.

Q. Where did you live before you lived in Manchester?

A. In Boston.

Q. How long did you live in Boston?

A. Five months.

Q. You are familiar with the streets in Manchester?

A. I am. I have travelled and walked them.

Q. You know where the corner where Grant's Department Store is?

A. Yes.

Q. You know where the five and ten is?

A. Yes.

Q. You are familiar with the traffic on Saturday nights?

A. Yes.

Q. On this particular Saturday night in front of Grant's Store, across from Nelson's five and ten you saw six or seven people?

A. I didn't say that.

Q. How many did you say?

A. I said how many came around the officer and I. I said six or seven, but I see in the distance over fifty people around on the other side lines.

Q. How many people would you say approximately were at that corner?

A. Fifty or sixty on the four corners.

Q. I am referring to the corner where you were parading.

A. You said both sides, Grant's store and Nelson's store, and so forth. I agree it is a busy corner.

Q. You agree it is a busy corner?

A. It is a busy corner, yes.

Q. It was a busy corner that night?

A. Not on that night, no. I say the four corners had about fifty or sixty people.

Q. Was it busy that night or was it not?

A. It was not busy that night.

Q. As a rule it is on Saturday nights?

A. Perhaps but not that Saturday night.

Q. But every other Saturday night it was?

A. Perhaps it was. We will let it go.

Q. All right, we will let it go at that. Thank you.

A. You are welcome.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. If you know, what time did you leave the Odd Fellows Hall?

A. Fifteen minutes after seven.

Q. If you know, approximately what time were you arrested by Officer Tierney?

A. He met me about twenty-five minutes after seven, but I was not arrested by him.

Q. You were not arrested by him?

A. No. He told me I was not under arrest.

Q. When were you arrested?

A. He took me to the police station. I asked Inspector Kelley, am I under arrest? He said, no, you are being kept in charge to be seen later on.

Q. When did you learn you were under arrest?

A. When we were booked.

Q. When you were booked?

[fol. 126] A. Yes, sir. That was after nine o'clock sometime, as I believe. Before that we were referred to as not arrested but merely held there.

Q. Whether or not you know any of your people that were here—you say there was about one hundred here that day?

A. What is that?

Q. Whether or not any of those people who came in on that information march—whether or not you know when any of the people were liberated or let go from the station?

A. No, I do not, I don't.

Q. Who were they that composed the march which you were the head of?

A. Just what do you mean by that question?

Q. Who were the people?

A. In the march?

Q. Yes, in the march.

A. Why, men, women and children.

Q. Men, women and children?

A. Yes, sir.

Mr. Barnard: That is all.

Recross-examination.

By Mr. Broderick:

Q. There is no doubt at all but what you applied to Mr. Kenney for the purpose of obtaining a license to operate a sound truck and not to parade?

A. For a permit to?

Q. Did you have a sound truck?

A. We had a sound truck but we didn't go back for the permit.

Q. Why didn't you go back?

A. We were very busy making up the placards for the information march.

Q. Did you make those?

A. I helped to.

Q. What is the reason you gave for not having a sound truck?

A. We have a sound truck.

Q. Did you use it at that time?

A. We did not.

Q. What is the reason you did not?

A. We were very busy.

Q. Why did you apply for a license?

A. We did not apply for a license. For a permit we did. We merely felt he could grant us a permit to operate a sound truck in the city of Manchester because we see the Cote Baker truck had a sound truck likewise. He told us our mission was not charitable. That is not true.

Q. Did he ask you to return?
A. Yes, he did ask us to return and his answer would have been no.
Q. You don't know what his answer would be?
A. He spoke in Municipal Court.

Mr. Broderick: That is all.
Witness: Thank you.

Further redirect examination.

By Mr. Barnard:

Q. Mr. Chaplinsky, you said you made those signs. What did you make? What did you do?
A. I helped cut these signs and paint them; cut these off here and paint this on.
Q. What else did you do?
A. Put strings on and help put the nails on this stick here.

Mr. Barnard: That is all.

[fol. 127] Arvid E. Moody, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your name, please?
A. Arvid E. Moody.
Q. Where do you live?
A. In Dorchester, Mass.
Q. What is your occupation?
A. I am an ordained minister of the gospel.
Q. Whether or not you were in Manchester July 8th, 1939?
A. I was, sir.
Q. For what purpose?
A. I was here to help further participate in the Kingdom's message by means of an information march.
Q. Were you in a march at that time?
A. Yes, sir.
Q. Whose group were you in?
A. Mr. Chaplinsky's.
Q. Mr. Chaplinsky is the gentleman who just testified?

A. Yes, sir.

Q. Will you tell the court and jury just what happened in that parade so far as you know?

A. From beginning to end?

Q. Yes, from the beginning.

A. Well, we left the hall at 7:15, I being the second one in line. We went down Hanover Street. That would be on the left hand side going toward Elm Street. When we got to Elm Street, we turned right, going up Elm. I believe that would be going north in this city. We proceeded along to Concord Street, where Officer Tierney approached Mr. Chaplinsky. As he approached, why we stopped, I being at all times between fifteen and twenty feet from him, but at that particular time I approached I would say within ten feet. He conferred with Mr. Chaplinsky within a short time, and then he walked to the right, up Concord Street, diagonally across the common. All this time Mr. Chaplinsky was conferring with the officer and as we approached the other corner there of the triangle Mr. Chaplinsky turned to me and said, you proceed. I being a stranger here didn't know where to go. He said proceed down to the end of this street, take the right and go as far as Pearl. He said from Pearl Street cross the main street and go back on the opposite side to Hanover Street and back to the hall.

Q. Now, what was the condition of pedestrian traffic over the route you were travelling from Odd Fellows Hall to Concord Street, as you saw it?

A. In my estimation there was very little traffic.

Q. Whether or not you have any idea as to how many you might have passed?

A. I didn't exactly count them but I do know from the corner from where Mr. Chaplinsky left us, I think that is Chestnut and Amherst, it took exactly from that point twenty minutes from there to march up to Pearl Street and [fol. 128] turn right on Pearl and proceed up approximately one hundred feet and back onto Elm Street as far as Market Street. I judge that course is three quarters of a mile. There was very little.

Q. Whether or not you met many pedestrians on the east side of Elm Street as you proceeded from Amherst to Pearl Street?

A. No. There was very little traffic there.

Q. Whether or not there was any congestion of traffic when you came down, after leaving Mr. Chaplinsky at Am-

herst Street, clear to Pearl Street—was there any congestion of traffic there at all?

A. I didn't see any congestion. The sidewalks seemed about—quite wide—I imagine two-thirds the width of this room.

Q. Whether or not there were many people on Elm Street?

A. There was very little in my opinion.

Q. Whether or not as you proceeded you turned around to see if those in back of you were coming at any time from the time you left Odd Fellows Hall until you were stopped by Mr. Tierney?

A. There was only three instances where I observed those in back of me.

Q. Where was the first one?

A. The first one was on Pearl Street where I had taken a right turn and gone approximately one hundred and fifty to two hundred feet and crossed over on the north side of Pearl Street and back toward Elm. I saw the tail end of the march at that particular instant.

Q. Whether or not after Mr. Chaplinsky left you at the corner of Chestnut and Amherst Street did you notice from the back as to what was happening in back to those who were supposed to be following you?

A. I assumed they were coming with me.

Q. Did you see them?

A. I did not. I was concerned about following the proper course at that particular time.

Q. Do you know how far the person directly back of you was from you?

A. At what time?

Q. Before you were arrested by Officer Tierney?

A. No. I have no idea.

Q. Now, you say you proceeded to Pearl Street?

A. Yes, sir.

Q. What did you do after you got to Pearl Street?

A. As I said before, I went up Pearl Street one hundred and fifty to two hundred feet and crossed, going back in the direction of Elm Street. There there was light traffic. We stopped there until we could proceed properly, waiting for the light.

Q. As you stopped there did the others who were marching with you come up to you?

A. No, we kept our—I can't actually tell because I didn't look behind. I imagine we kept our respective distances.

Q. They didn't come up to you while you were waiting at the light?

[fol. 129] A. Not to my knowledge.

Q. You may continue. You are on the west side of Elm Street going south?

A. Yes, we proceeded along there going south, I being the first one in this case at that time. We went a little ways and passed the Salvation Army I believe it is. It appeared to be such. And continued on until we came down to I believe it is the City Hall here, Market Street. At that particular point I noticed an officer on the opposite side of the street coming over in my direction. I believe his name was Hould. He came over and asked me if I had a permit to do this. Well, I said, the one that was in front of me has already gone to the station with another officer to straighten out matters.

Q. Now, Mr. Moody as you came down from the traffic light on the west side of Elm Street proceeding south, as you marched down there what was the condition of pedestrian traffic that Saturday night on the west side of Elm Street down to the City Hall?

A. There was very little. In fact around the Salvation Army band I didn't see anybody. I happened to notice them because at that time the light was red against us so I waited and observed that.

Q. There were some people on the sidewalk that you passed?

A. Oh, yes, there were some people, to be sure.

Q. Were there any crowds or congestions?

A. I didn't see any crowd at all.

Q. Did you have any difficulty in proceeding south because of pedestrians there?

A. No, sir.

Q. You were not obliged to weave in and out among the people there?

A. No.

Q. At any time from the time the march started from Odd Fellows Hall until the time you were held up by the officer were there any particular crowds of people you saw congregated together?

A. The only time I saw any group, and I wouldn't call it very many, was when the inspector took one of our people

in the rear and had Officer Hould evidently ring in. There was a few people gathered there but not very many.

Q. That was after the officer held you up?

A. That is right.

Q. Then the officer, you say, arrested one of your group and took him to the box?

A. I was a plain clothes officer, dressed in shirt sleeves and straw hat who took I believe it was the last one in our group.

Q. How long were you stopped on the corner of Market Street and Elm Street, which is the City Hall, by Officer Hould?

A. Theoretically I wouldn't know, but I would say four minutes roughly.

Q. Then what happened?

A. Then Officer Hould took us across the street.

[fol. 130] Q. Do you mean across Elm Street?

A. Across Elm Street and proceeded down Elm Street. That would be the left hand side, the east side, to the next street which I believe was Manchester Street and up to the station. I did not pay much attention just the exact way we went from then on because I was engaged in conversation with Officer Hould and knew where he was taking us.

Q. After you started across Elm Street with Officer Hould, whether or not you looked back to see if those who had been following you were still following you?

A. No, I didn't. He turned back and said something about seeing if the others were following. I said you don't need to worry about Jehovah's Witnesses not obeying, they will all come if you wish them to.

Q. You don't know how near together they were shortly after Officer Hould stopped you on Elm Street?

A. No, I didn't pay much attention because I was busily engaged with that conversation.

Q. Did you at any time after you turned left onto Manchester Street look back?

A. No, sir.

Q. What was the condition of pedestrian traffic on the east side of Elm Street after you crossed with Officer Hould going toward Manchester Street?

A. We proceeded in a straight line; we didn't have to dodge once.

Q. Whether or not there were many people on the street at the time they were taking you to the station?

A. No, sir, not in my opinion.
Q. There were some?
A. There were some.
Q. What was the condition of pedestrian traffic on Manchester Street after you turned off Elm Street going toward the police station? What was the condition of traffic there?
A. There was some but as I remember there was not very many.
Q. As you recall it, what time did you leave the Odd Fellows Hall?
A. 7:15.
Q. If you know what time were you accosted by Officer Hould?
A. 7:45.
Q. 7:45?
A. Correct.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Where did you say you reside?
A. Dorchester, Mass., at 347 Norfolk Street.
Q. You are familiar with the streets in Manchester?
A. No, I have not been here very much. I have only passed through here several times.
Q. Still you are somewhat familiar with Manchester Street, Pearl Street, Elm Street and Market Street?
A. Yes. That was not many. I noticed and read the signs. That is why I remember them.
Q. The Witnesses told you the names of the streets?
A. The Witnesses told me the names of the streets to fol-
[fol. 131] low, which I did and confirmed them by looking at the signs on the streets.
Q. You and the Witnesses talked it over before coming to court?
A. No, sir.
Q. Do you mean to say that you didn't talk this over?
A. I talked with my attorney.
Q. You mean Mr. Barnard?
A. Yes.
Q. Did you talk with him alone?
A. No, there was others around.

Q. They were Witnesses?

A. Yes.

Q. And didn't you talk with the Witnesses, too?

A. Yes, generally.

Q. That is what I asked, whether or not you talked this matter over with the Witnesses before you came to court.

A. If you are trying to infer——

Q. I am not trying to infer anything. I just asked if you talked this case over with the Witnesses before you came to court.

A. I talked it over, yes.

Q. Was it then you learned to know by heart the names of the streets of Manchester?

A. No, sir, I knew before. I have been an engineer and surveyor before. I am trained to observe things like that.

Q. Being an engineer you are trained to observe streets and things like that?

A. Yes.

Q. Going through the course of your march you didn't look back to see the distance between the marchers?

A. Just as I told instances to Mr. Barnard.

Q. But you didn't look at any time other than that?

A. I just wanted to be sure to keep my fifteen feet distance when Mr. Chaplinsky was ahead of me.

Q. After Mr. Chaplinsky left you, you couldn't do that?

A. No.

Q. When you were leading the parade did you look back occasionally to see at what distance the others were following?

A. No, I did not, except at the point where Officer Hould was. I saw the one to the rear of me. Otherwise I did not.

Q. At some place that Saturday night Mr. Chaplinsky was taken to the station?

A. I assume he was taken to the station.

Q. Naturally, if an officer comes up to a man—didn't you know as a matter of fact he was going to the station?

A. I didn't see him go there but I assume he did.

Q. Where did you think he was going?

A. He mentioned he was going to the station.

Q. Of course he mentioned he was going to the station. You also knew it was because he was parading?

A. I assumed he was going to confer on that because the officer allowed us to continue on.

Q. The officer allowed you to continue on after that?

A. Yes, sir.

Q. Do you recall what he said to you?

A. He must have—Mr. Chaplinsky told us to continue and the officer did not stop us.

[fol. 132] Q. Tell me, please, the words the officer used when he told you to go on with the parade?

A. It was implied by the fact when he was at that point Mr. Chaplinsky turned to me and stated or said to continue on.

Q. Did the officer hear that?

A. He must have. He was right there.

Q. As a matter of fact, you knew Mr. Chaplinsky was taken to the station, and with that in mind you continued to parade?

A. I assume he was taken to the station. I continued on as I was instructed.

Q. Instructions from the officer?

A. It must have been in the affirmative or he would have stopped me as Officer Hould stopped me and all the others and told us to go to the station house.

Q. How many people would you say were outside the City Hall that night, approximately?

A. Well, what do you mean? I believe that covers that corner, as I saw the mayor's office and a few other names on the windows there.

Q. Let's take just the corner outside the mayor's office. How many people did you see there?

A. Perhaps twenty-five or something like that. I don't know. I was busily engaged with Officer Hould.

Q. How many would you say were in the intersection of the four corners?

A. I didn't observe.

Q. What would be your best estimate?

A. I couldn't say.

Q. You can't give us any idea?

A. No, sir.

Q. So far as you know there might have been six or seven hundred people there?

A. The only idea I can give you is when we crossed over to the other side.

Q. Now you crossed over to the Amoskeage Bank Building. How many do you think were there?

A. I don't think any more than on the other side.

Q. How many was that?

A. Probably twenty-five. It depends on what you mean by in front of the building.

Q. Oh, I don't want to be technical. Right in front of the big bank building.

A. I didn't notice how big the bank was.

Q. Well, skip the bank. Just take the corner.

A. About twenty-five.

Q. You walked south. Are you familiar with Leavitt's store?

A. Leavitt's? No.

Q. Are you familiar with the bank next to Leavitt's store?

A. No.

Q. You don't know how many banks you passed?

A. There may have been a dozen. I don't know.

Q. Do you know as a matter of fact that that section of the city is the busiest section of our city?

A. As a matter of fact I didn't know which was the busy section.

Q. Did you have a permit to parade?

A. A permit?

Q. Yes.

A. Only from Almighty God.

Q. I mean aside from Almighty God, from the State of [fol. 133] New Hampshire?

A. No, sir.

Q. But you did parade?

A. I was in an information march.

Q. Will you give us the definition of information march, and compare it with parade?

A. I can only give you the definition of information march; I am not familiar with the term parade.

Q. You know what a parade is?

A. I have an idea in general.

Q. You tell us what your general idea of a parade is.

A. Well, my idea of a parade is, I don't know how near right I am, I would say a parade is a more or less vain display of men, more or less in uniform. That would be my opinion.

Q. They would have to be in uniform?

A. Not necessarily.

Q. Then they would not have to be in uniform?

A. Webster, I think, defines it as a vain order or something like that.

Q. Now, what is an information march?

A. An information march is——

Q. It is nevertheless a march?

A. Yes.

Q. What do you mean by a march?

A. It is an orderly, steady movement forward, progressive movement forward and in that forward movement, according to Webster's dictionary——

Q. Let's forget Webster's dictionary, let's have your opinion.

A. That is what I base my information on. That information in this steady movement was information pertaining to God's kingdom message. That is why I was participating.

Q. Do you mean every march has to be in the interest of God's kingdom?

A. No, that is my case.

Q. I didn't ask for your case. I asked what a march is.

A. It is a steady, progressive movement.

Q. What is a parade, isn't that a steady, progressive movement also?

A. I don't know about a parade.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. After you were stopped at the City Hall by Officer Hould whether or not you looked north on Elm Street to see where your group was situated?

A. No, I didn't. I might have taken a quick glance. I noticed they were there, that's all.

Q. You can't state of your own knowledge how close they were together?

A. Well, I didn't pay particular attention, but I would judge somewhere around——

Mr. Broderick: Just a minute please.

Q. What do you say, of your own knowledge, seeing your people there?

A. Well they were about between eight and ten feet apart.

Q. How near was the nearest marcher to you when you were talking to Officer Hould?

A. Well, I did notice that definitely. He was about eight feet.

Q. Whether or not any of the marchers came up to you [fol. 134] while you were in conversation with Officer Hould to see what was going on?

A. No, sir, not one.

Q. Whether or not any of your people in this march walked toward you?

A. No, sir, not any.

Q. Mr. Moody, do you know why Officer Tierney took Mr. Chaplinsky from the head of your group?

A. I didn't hear any of his conversation. It would be mere assumption.

Q. Whether or not you knew where they were going?

A. No, I did not definitely.

Q. But Officer Tierney did not stop you from going west on Amherst Street, did he?

A. No, sir.

Q. Whether or not you started before Officer Tierney and Mr. Chaplinsky were out of sight?

A. I imagine we started simultaneously.

Q. So that Mr. Chaplinsky was going toward the station and you started toward Elm Street on Amherst Street at the same time?

A. Yes, sir.

Q. So the officer knew you were continuing that march. Is that correct?

A. That is correct.

Mr. Barnard: That is all.

Mr. Barnard: We wish to offer certain pamphlets for admission to the record, six in all, for the purpose of the record and as exhibits.

The Court: I am going to exclude them and you may have them marked for identification.

Mr. Barnard: May we save our exception?

The Court: Yes.

Willis H. Cox, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?

A. Willis H. Cox.

Q. Where do you reside?
A. Manchester.
Q. What is your occupation?
A. I am a minister of the gospel.
Q. On the day of July 8th, were you in Manchester?
A. Yes, sir.
Q. Whether or not you participated in the information march of the Jehovah's Witnesses?
A. I did.
Q. What group were you in?
A. The last group that left the hall.
Q. I show you a picture, Defendant's Exhibit B, whether or not the person with the officer is yourself?
A. It looks like me. I couldn't swear that it is my picture although it is the rear, of course.
Q. I show you Defendant's Exhibit G and ask you who the person is with the officer in that picture?
A. I would say that is myself.
Q. And now whether or not you can identify the person in front of you and the officer?
A. That is Mr. Lieby.
[fol. 135] Q. I show you Defendant's Exhibit B again and ask you who, if you know, is the person in front of the officer and yourself?
A. That is the same form. I would say it is Mr. Lieby. The form seems to be exactly the same.
Q. Now, Mr. Cox, where did you start from in this information march that you were in?
A. 83 Hanover Street.
Q. How many persons were ahead of you when you came out?
A. In the parade do you mean?
Q. Yes.
A. In the march. It has been called a parade here, but it is march. One person that I saw. Mr. Lieby was ahead of me.
Q. What was the distance between you and Mr. Lieby?
A. I was careful to maintain the required distance of approximately fifteen feet. It took most of my attention to accomplish this, but I think I did and some of the time I was farther back than that.
Q. How did you proceed on Hanover Street?
A. Down Hanover, turned left on Elm and as arranged to avoid traffic and to cause the officers as little inconveni-

ence as possible, we went down nearly as far as Manchester Street to make our crossing. We crossed Elm there and proceeded down Elm Street to West Merrimack Street.

Q. Whether or not as you proceeded west on Hanover Street and south on Elm Street, across Elm west, you looked back on that procession at any time?

A. I don't recollect that I looked back at all. Not definitely.

Q. Mr. Cox, what was the condition of traffic, pedestrian traffic on Hanover Street from Odd Fellows Hall to Elm Street?

A. It was light as far as traffic was concerned. There were a few standing in doorways and as I remember it some collected at the curb to watch the procession or march go by.

Q. Whether or not there was any great crowd?

A. No, there wasn't any great crowd.

Q. What was the condition of pedestrian traffic on Elm Street from Hanover to Manchester Street?

A. As I recollect there was some little disturbance or gathering of officers that caused a little congestion on the corner of Hanover Street, but not enough but what we had plenty of room to go by and go down. After that I don't remember, but there couldn't have been much.

Q. How many if you recollect or can state, how many persons were at the corner of Hanover and Elm Streets when you came down?

A. I mean all four corners. Our corner, where we crossed, I would say there were twenty-five people there at the bank entrance and on the curb.

Q. That is on the curb, and the Amoskeag Bank do you have reference to?

A. Yes.

[fol. 136] Q. That is on the corner of Hanover and Elm Street?

A. Yes.

Q. In that distance there might have been twenty-five people?

A. Yes, there might have been twenty-five people.

Q. How many people were in your march?

A. I don't know only what I have heard. I believe it was twenty-five.

Q. Never mind what you heard. What was the condition of traffic as you crossed Elm Street toward the west from Manchester Street, toward the west side of Elm Street?

A. There wasn't any traffic there. That is why we crossed there, because there wouldn't be much there. We may have stopped one or two cars, but I don't remember.

Q. After you crossed over on the west side of Elm Street whether or not you looked back to see whether the marchers were crossing there?

A. I didn't look back, as I remember, at all on the whole march.

Q. I understand you proceeded south. After you crossed Elm Street at Manchester Street you proceeded south?

A. We proceeded south to West Merrimack Street.

Q. What did you observe at that time?

A. What do you mean by what did I observe?

Q. What was the condition of pedestrian traffic on the west side of Elm Street as you proceeded from Manchester Street toward West Merrimack Street?

A. I would say the pedestrian traffic was just about nothing. They were all gathered in stores, below the corner and on the other corner.

Q. Have you in mind the corner of West Merrimack and Elm Street?

A. What were gathered there were gathered on account of police regulations or disturbance, you might say.

Q. As you recollect who was held up at the corner of West Merrimack and Elm Street?

A. I was looking straight ahead. You might say I saw out of the corner of my eye I saw a little disturbance and mentally concluded Mr. Lieby was being taken into custody.

Q. Who was the officer, if you know, who accosted Mr. Lieby?

A. I didn't see any officer accost Mr. Lieby.

Q. Did any officer accost you?

A. Yes.

Q. Who?

A. As we proceeded, as we crossed West Merrimack he at the same time was proceeding from the other side to intercept me. Naturally when we met I stopped to see what he wanted. Do you mean the officer?

A. Mr. Hickey. Yes.

Q. Which side of Merrimack Street did Officer Hickey take you?

A. He returned with me to the north side of West Merrimack Street, and we immediately started across Elm Street.

Q. What, if you recall—when you and Officer Hickey re-

[fol. 137] turned to the north side of Merrimack Street, whether or not you saw any persons who were in the line of march in your group?

A. I saw Mr. Lieby from then on all the way to the police station.

Q. Where were the other marchers?

A. I didn't see them. I didn't look around.

Q. When you and Mr. Hickey returned to the north side of West Merrimack Street did you see them?

A. I might have noticed there but I didn't see any of them.

Q. You didn't see any of them?

A. No, I didn't see any of them. That isn't saying they were not there, you know, but I didn't see any of them.

Q. The officer escorted you from West Merrimack and Elm Street- to the police station. On that escort whether or not Mr. Lieby was ahead of you all the time, if you saw him?

A. Mr. Lieby was ahead of us all the time. Yes.

Q. Approximately what was the distance Mr. Lieby was ahead of you?

A. He was too far for speaking distance. I would say he had gone considerably farther ahead than we were supposed to keep apart, quite a lot farther. He might have been thirty feet at times ahead.

Q. If you know, what was the condition of pedestrian traffic on Merrimack Street as you proceeded with Officer Hickey to the station?

A. I declare I can't say anything about it. I don't know if there was a dozen or two or wasn't any. All I saw that took my attention was someone taking photographs. That did take my attention.

Q. Was there any large amount of traffic?

A. There couldn't have been or I would have been more apt to notice them.

Q. Now, Mr. Cox, whether or not prior to the time of this information march had you or anyone else to your knowledge been to the police station?

A. Before the march?

Q. Before the march.

A. Yes.

Q. On that Saturday night?

A. Yes, I accompanied Mr. Lieby to the police station.

Q. Approximately what time was that?

A. It was about half past six. It might have been a little later, but it was fully that much.

Q. What was the purpose of you and Mr. Lieby going to the police station at that time?

A. What was our joint purpose?

Q. Your purpose in going to the police station?

A. My purpose was because I was invited to go. I was invited to go because I am recognized by most of the police friends, the police officers. They know me, that is to say. Particularly the chief, because they knew who I was and knew I have been in the city for fifty years.

Mr. Broderick: I suggest it isn't necessary to have such a long statement as to why he went there.

[fol. 138] Q. What was your purpose?

A. More briefly, do you mean?

Q. Yes.

A. The purpose was to inform the police of what was taking place, out of respect, as I told them, for the body, for the police officials and for their protection. Out of respect we went there to tell them what we were going to do.

Q. You didn't go there to procure a permit?

A. No.

Q. What else did you go to the station for?

A. Merely to inform them what was taking place and for their cooperation. That is, we wanted their cooperation.

Q. What was said to you at that time, as you recollect?

A. Mr. Manning, I found out afterwards that was his name, said we couldn't parade without a license or permit, and we could get that tomorrow somewhere. I don't remember where he said we could get it.

Q. What if anything did you say?

A. I said we are not going to parade, we do not want a parade. I may not give this in consecutive order because I didn't expect it would ever come up again. It was a friendly visit, so far as I was concerned. I said for our purpose no permit is necessary, and I produced a ruling of the highest court in the land to let him know why a permit was not necessary. He said he didn't care anything about that. I said, well, there is no city ordinance against our work. I had at that time a copy of the ordinances in my pocket, which I have now. I said, it doesn't appear in here, there isn't any suggestion of it whatever. Then he took my name and ad-

dress, naturally, and said, are you the leader? I didn't make any direct answer and I turned to Mr. Lieby for proof and said to Mr. Lieby, am I the leader? Mr. Lieby replied in the negative, I was not the leader or a leader.

Q. After that did you leave the station?

A. I forget whether there was any more friendly conversation or not. I can't remember, but Mr. Manning went around and sat down in his chair and I said, now officer be a good boy now and cooperate with us. I had in mind to say——

Mr. Broderick: No.

Q. Then you left?

A. We left. That was the last word.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Just before you left the station you said to the police officer, now be a good boy, meaning, I am going to parade anyway, license or no license. That is the substance of it?

A. No, I wouldn't say that.

Q. You said be a good boy?

A. I said be a good boy and cooperate with us.

[fol. 139] Q. And cooperate with us, and you went out and paraded?

A. No. I went back to the hall.

Q. You went back to the hall, and after that what did you do?

A. We went on the information march.

Q. I am sorry I used the word parade. You said be a good boy, and cooperate with us, you left the station and went to the hall, and then, for your satisfaction, you went on an information march?

A. Not for my satisfaction but in the service of Jehovah God.

Q. For the service of Jehovah God, then, you went and marched on an information parade?

A. Information march.

Q. You say you are a minister of the gospel?

A. Yes, I am a minister of the gospel.

Q. You are also a retired mail carrier?

A. Yes. I am a carpenter. I am a painter. I am a doctor, in a way.

Q. And what else?

A. A farmer.

Q. And a farmer?

A. I can put up good work on any of these.

Q. You are a jack of all trades?

A. Oh, no, not a jack of all trades.

Q. Anything else?

A. I am a faithful Witness of Jehovah God and His Kingdom, which is the one and only hope of the world.

Q. How long have you been a minister?

A. Since about 1909.

Q. Are you a graduate of any college? Have you a diploma?

A. I have the word of the Lord, a good, large and comprehensive diploma.

Q. Have you a diploma from any college?

A. Not a written diploma.

Q. You are a minister of the gospel and you have no written document from any source?

A. I don't know if it is recorded or not. I don't keep records of those things because it is all recorded in the word of God.

Q. Is that a document that is published?

A. It is published in some of the writings——

Q. Have you published for the city officials and state officials any document that you are an ordained minister of God?

A. I haven't published any document that I am an ordained minister but they know it in the city government.

Q. Do you know of your own knowledge if every Witness of Jehovah is a minister of God?

A. Every Witness of Jehovah is a minister of God. Yes.

Q. So every one of your members are all ministers. That is true?

A. Members of the body of Christ. Not members of an organization. Members of the body of Christ. Here is where it is from, Paul, ye are all able ministers of the new covenant.

Q. You are a minister of the gospel but have no written authority from any source, except the word of God?

A. Yes, I am.

Q. This is so—before the parade you and Mr. Lieby called at the police station? That is true?

[fol. 140] A. Yes, sir.

Q. You told the police that you were going to parade?

A. No, sir.

Q. Well, I am sorry—you told them you were going to have an information march?

A. Yes.

Q. I will ask later if you will distinguish between them. When I say parade, I will imply information march. If I slip up, I don't want to hurt your feelings. You went to the station to inform them you were going to have an information march?

A. I didn't say information march. I said a few of us were going to go down the streets advertising this meeting with placards. We had in mind an information march, to be sure.

Q. You don't want me to call it an information march? What do you want me to call it? If you don't want me to call it an information march or a parade, what do you want me to call it?

A. Won't you give me a chance to explain? Call it what you may.

Q. I will call it a march. You called at the station, informing the man at the station you intended to march?

A. That was the sum and substance of it.

Q. About a week prior you called upon Mr. Kenney?

A. I called on Mr. Kenney about two years ago. I can't give you the date, but it was somewhere near two years ago.

Q. You didn't call on him a week prior?

A. No.

Q. You knew it was necessary to have a permit?

A. I knew it was not necessary to have a permit.

Q. Didn't the police tell you it was necessary?

A. For a parade, but not for a march.

Q. But before the march——

A. He didn't mention march. He said it was necessary to have a permit for a parade.

Q. Did he tell you it was necessary to have a permit for a parade?

A. Yes.

Q. Mr. Lieby was with you?

A. We were together.

Q. He is in the courtroom, is he?

A. Yes, I see him here.

Q. Do you recall what he said to Mr. Manning in your presence?

A. No, I don't, I can't. I don't know what he said.

Q. He was with you?

A. Yes. I didn't pay any attention to what he said.

Q. You didn't pay a bit of attention to what he said?

A. No, I didn't pay a bit of attention to what he said.

Q. Do you recall that he said, we are going to parade anyway, and ran out of the station?

A. No, I don't recollect he said we are going to parade anyway, and I know we didn't run out of the station.

Q. Were you in the courtroom when Mr. Manning testified?

A. Yes.

Q. Do you recall Mr. Manning making that statement?

A. All I recall of Mr. Manning's testimony at the present moment—I may later think of more—is that he insisted we [fol. 141] were going to parade.

Q. Who insisted?

A. Mr. Manning. He insisted we wanted to parade. That is all I recollect of his testimony.

Q. And you insisted you were not going to parade?

A. Yes.

Q. And you didn't parade?

A. No, we didn't parade.

Q. You just held an information march?

A. Yes, we just held an information march.

Q. And you carried signs with information on them?

A. Yes.

Q. Did you have a license, by the way?

A. No.

Q. Did you hold an information march on Saturday, July 8th, on Hanover Street?

A. Oh, yes.

Q. It was a pretty good day, wasn't it, Mr. Cox, a good, summers day, July 8th?

A. It was pretty warm. I couldn't wear any coat.

Q. There was no rain?

A. Oh, no, a nice pleasant day.

Q. You have been a mail carrier?

A. I have been.

Q. You have lived in Manchester a long time?

A. Fifty years.

Q. You say the distance between the marchers was approximately fifteen feet?

A. I don't say anything about it, only as to Mr. Lieby and myself. I was fifteen feet from him.

Q. You can't tell about the others?

A. I didn't look around.

Q. You can't help us on that then?

A. I am afraid not.

Q. You have seen these pictures?

A. Yes.

Q. Is that why you do not want to testify they were not fifteen feet apart, because of these pictures?

A. I wouldn't know about those.

Q. Of your own knowledge you don't know what distance they were apart?

A. No; I can't prove anything on that line.

Q. So in open defiance of the police, after you were informed you couldn't hold an information march, you went out and marched?

A. No, sir; there was absolutely no defiance, no spirit of defiance.

Q. Nevertheless you held the information march?

A. Yes, I participated in it.

Q. Advertising a so-called information meeting?

A. Yes.

Q. Was there any advertising in the newspapers?

A. The press always give us a little note. We didn't put in a paid notice this time as we often do. That is, I don't remember we put in a paid ad at this time.

Q. You know the condition of Elm Street, especially at the corner of Hanover and Elm?

A. Yes.

Q. Traffic conditions?

A. Yes.

Q. You know the condition of traffic, especially on Saturday nights, in our city?

A. Yes.

Q. You know, of course, the Amoskeag Bank Building is there, the Post Office, also. It is a very, very, very busy street, isn't it?

A. It is as busy as any corner, I would say.

[fol. 142] Q. Isn't it busier than any corner?

A. No, I wouldn't have it as busy as West Merrimack and Elm Street.

Q. West Merrimack and Elm. I thought you said the traffic at West Merrimack and Elm Street was nothing?

A. I said the traffic was composed of people at the corner or near the corner because of the police.

Q. But there were twenty-five people at the corner at Hanover and Elm on a busy Saturday night?

A. I didn't count them. I would say that is my estimate.

Q. Approximately twenty-five?

A. Yes, approximately twenty-five.

Q. Mr. Cox, aside from this night, can you recall any one incident for the past ten years when you came down to the corner of Elm and Hanover Street when you saw less than twenty-five people?

A. Can I recall any time I saw less than twenty-five people?

Q. On a Saturday night between six and seven-thirty o'clock?

A. I guess I am kind of dumb. When I saw less than twenty-five people. Well, I will say—I can't get the question through my mind yet. I guess I am kind of confused. If I may make the statement I would say I have been down street when there were many more than there were that night, very many more, twice as many or three times, perhaps. I have been down street when there may have been a few less, but this was a hot night, people were away on vacations, theatres were closed, and so forth. It is my impression my figures are right.

Q. Did you say the theatres were closed?

A. I think they were. I wouldn't swear to it. I didn't see any theatrical people, I didn't see anybody going in or coming out. I am assuming they were closed.

Q. Now will you answer yes or no. Can you recall any period in the last ten years when you came down to the corner of Hanover and Elm Street on a Saturday night, no raining conditions, and you saw less than twenty-five people on that corner?

A. Yes, there has been times I would say I have seen less.

Q. Now, Mr. Lieby was in front of you?

A. Yes.

Q. Yes. He had a sandwich sign, one of these signs?

A. Yes, I think so. Yes, I think he did.

Q. That sign was merely in front, there was no sign on the back?

A. I don't think there was a sign on the back; I don't think there was.

Q. So if there was someone walking in front of you with no indication of a sign on his back, wouldn't it be difficult for a police officer to ascertain if that man was a member of the organization or not?

A. I don't know about that. I knew him. He saw us going in the police station and everything. I think he knew.

[fol. 143] Q. Is there any way for an officer to tell from that picture whether or not this man in front of you is a member of your organization?

A. You see in his hands; that would be the only way.

Q. I can't see it.

A. That would be the only way an officer could identify him.

Q. There is no placard on his back such as yours—you have one, haven't you?

A. Yes.

Q. Front and back?

A. Front and back.

Q. The man in front has no placard in back?

A. No, the man has no placard on his back but there is evidence of some white at the side.

Q. You are having some difficulty to ascertain if he was one of the organization, aren't you?

A. Well, he wouldn't know probably.

Q. As a matter of fact the picture was taken after the arrest, anyway?

A. No. No, not after the arrest. It was taken after we were taken in custody to go to the police station.

Q. You are walking with the officer?

A. Yes.

Q. That was taken after you were taken into custody?

A. Yes.

Q. As a matter of fact you were more interested in a man taking your picture than in anything else?

A. As a matter of fact it did take my attention. The last bulb blinded me for just a minute.

Q. I thought you testified you were more interested in the photographer than anything else?

A. I didn't say I was more interested in the photographer

than anything else. It attracted my attention, naturally, such a flash as that. I had never seen one before.

Q. Do you know the man who took the photographs?

A. I know the man who said he took them. Yes, I know him.

Q. Did Mr. Lieby come out of the station with you that night?

A. Yes, we were together.

Q. Coming out?

A. Yes.

Q. You are sure of that?

A. We were together. I don't know how near we were, but we were together, but when we came on the steps we were engaged in conversation.

Q. Coming out?

A. Yes, coming out.

Q. You do remember that?

A. Oh, yes.

Q. You told Mr. Manning no permit was necessary, anyway, didn't you?

A. Yes, for our work no permit is necessary.

Q. And that was that. You made up your minds no permit was necessary and that was that?

A. I didn't make up my mind. I had the proof and I have it now that no permit was necessary.

Q. When Mr. Manning asked if you were the leader, why was it necessary for you to turn to your companion? Why couldn't you make up your mind whether or not you were the leader?

A. I turned to him for his cooperation, his decision as to [fol. 144] whether or not I was the leader.

Q. You didn't know whether or not you were the leader?

A. I didn't know I was. I didn't consider myself the leader. He was the man to ask if I was the leader.

Q. Was he a leader?

A. No, he wasn't a leader.

Q. He didn't have any authority to tell you whether or not you were a leader?

A. He asked me going up there with him. I didn't want to assume the honor of being a leader in the Lord's work. I turned to him to see if it would be right for me to say.

Q. You went to the station and you knew when you left the station so far as the Manchester police were concerned you could not and should not parade without a license?

A. No. sir, I did not.

Q. Did Mr. Manning tell you it was all right to parade without a license? Did he tell you so far as the Manchester police were concerned you could parade without a license?

A. He insisted we wanted to parade.

Q. What did you insist you wanted to do?

A. Walk down the street with placards.

Q. You wanted to walk down the street with placards and he insisted you were not going to walk down the street with placards without a license?

A. I wouldn't say he insisted we were not going to walk down the street with placards without a license. He wasn't very insistent. It was a friendly conversation.

Q. But he told you you couldn't walk down the streets with placards for the purpose of holding a parade without a license?

A. For the purpose of holding a parade.

Q. What?

A. After he went around to his seat——

Q. No. Read the question.

A. He always insisted——

Q. Answer the question yes or no.

A. As the question is I would say yes it is true.

Q. Still you marched down the street?

A. I did not parade down the street as your question implies.

Q. But you did have an information march down the street?

A. Yes, but he did not say we could not do that.

Q. Did I understand you to say, Mr. Cox, when the officer stopped you Mr. Lieby was thirty feet ahead of you?

A. When the officer stopped me?

Q. Yes.

A. I don't know where he was; he must have been on the curb.

Q. You don't know where he was?

A. I didn't look around to see him. I think he was on the curb there.

Mr. Broderick: That is all.

Redirect examination.

By Mr. Barnard:

Q. As you came down from the hall, down Hanover Street and down Elm Street and were crossing Elm going west at

Manchester Street, who if anyone was ahead of you at that [fol. 145] time?

A. Going west across Elm Street?

Q. Yes.

A. Mr. Lieby in our march was ahead.

Q. Whether or not Mr. Lieby was still ahead of you after you turned south on Elm Street to go toward West Merrimack?

A. He was still ahead of me, yes.

Q. Now, as I remember your testimony Officer Hickey met you about in the middle of West Merrimack Street, he coming toward you going north and you going toward him, going south?

A. Yes.

Q. Was Mr. Lieby ahead of you at that time?

A. No, not when I was trying to cross West Merrimack Street.

Q. So you don't know what happened to Mr. Lieby, so far as you are concerned. Is that right?

A. Why, yes, I know what happened to him.

Q. I mean of your own knowledge. You say he wasn't ahead of you when Officer Hickey accosted you?

A. No.

Q. Where was Mr. Lieby, if you know, at that time?

A. I didn't see Mr. Lieby at that time. I didn't see him again until I see him crossing Elm Street ahead of us.

Q. Whether or not on a Saturday, whether or not the Amoskeag Bank, which is in the Amoskeag Bank Building, at the corner of Hanover and Elm Street is open or not on a Saturday, and this Saturday, July 8th, 1939?

A. You refer to the bank. The bank building, the usher told me yesterday, is always open.

Q. I mean the bank part, the Amoskeag Bank in the Amoskeag Bank Building.

A. Yes.

Q. Is it open Saturday afternoon or evening?

A. Not to my knowledge. I understand it closes Saturdays at twelve. In fact, I have been shut out a minute after because I was late. I am going by my experience.

Q. You say you are, what title, a minister?

A. An ordained minister of the gospel.

Q. Whether or not you have any credentials to show that you are an ordained minister of the gospel?

A. Do you mean written credentials from some worldly person or college?

Q. Have you any written credentials showing you are a minister of the gospel?

A. I have the word of the Lord which is all that is necessary. I might explain that. In the vital statistics of the city and state it says anyone ordained according to their organization is an ordained minister and can perform marriage ceremonies. That is what the vital statistics say. Therefore I have that credential by civil authority and it is so recognized at the City Hall. That would seem to cover the legal part of it.

Mr. Barnard: That is all.

[fol. 146] Recross-examination.

By Mr. Broderick:

Q. When Officer Hickey accosted you on Elm Street, Mr. Lieby was not ahead of you?

A. On West Merrimack, no, he was not ahead of me then.

Q. At that point at least you were heading the parade?

A. I suppose they were coming behind me.

Q. You don't suppose they were going in another direction?

A. I assume the one who obstructed Mr. Lieby also obstructed them. I was alone.

Mr. Broderick: That is all.

Paul V. Lundberg, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your name?

A. Paul V. Lundberg.

Q. Where do you live?

A. I live at West Chelmsford, Mass.

Q. What is your occupation?

A. I am one of Jehovah's Witnesses, a duly ordained minister of the gospel.

Q. Whether or not you were in Manchester on the date of July 8, 1939?

A. I was.

Q. Why were you here?

A. I was here to participate in the form of advertising, a public meeting for the benefit of those who would like to hear something about the word of God and his incoming Kingdom.

Q. Whether or not you participated in a march?

A. I did participate in a march, an information march for that purpose.

Q. In whose group were you at that time?

A. I was in the group headed by Mr. Chaplinsky I believe.

Q. To save the time of the court and the jury, Mr. Chaplinsky testified you went down Hanover Street to Elm, north on Elm to Concord and east on Concord, through the common and across the common to Amherst and Chestnut Street. Is that right?

A. I can't verify that of my own knowledge, being a stranger in the city. I followed a form of march and was paying no particular attention to streets or anything of that kind.

Q. What position were you in in the march?

A. I was rear man of that column.

Q. Whether or not at any time Mr. Chaplinsky left the march, to your knowledge?

A. I didn't know he had left the march at any time.

Q. Will you tell us in your own words whether or not you remember being at the corner of Amherst and Chestnut Street?

A. I do not.

Q. Then will you please state to the court just what you did in that march from the time you left Odd Fellows Building, the time you left Odd Fellows Hall?

[fol. 147] A. It was my duty as I saw it to follow in line of the procession next to the person preceding me. I recall only one thing definitely as to where we went, outside of being on Elm Street. When we were stopped by the officer we crossed over a little park or common diagonally, then from there we proceeded on down back to Elm Street and from there as I recall it to the best of my knowledge we went north on Elm Street for some distance and then up a side street for a little distance, turned and came back on

the other side of that street, across Elm Street, and were proceeding on Elm Street when we were stopped.

Q. In a southerly direction?

A. Yes, I would call it that.

Q. You not being familiar with the streets, whether or not Pearl Street was ever called to your attention while you were in the march?

A. I knew nothing about the route we were to take.

Q. Now, Mr. Lundberg, what was the condition of pedestrian traffic as you came from the hall down to Elm Street, if you can recall, the pedestrian traffic on Hanover Street down to Elm?

A. Well, there were not enough people at any point on the route we covered to interfere with us or cause any inconvenience to anybody on the way. I know that distinctly.

Q. What was the condition of traffic on Elm Street as you proceeded north?

A. Very ordinary I should call it, being a city of this size and not being familiar with it under other circumstances, judging from what I would expect from a city of this size it was very ordinary and light. I think that was due to the weather. It was extremely hot that night, and people evidently took to other means of recreation than walking along the streets.

Q. After you crossed Elm Street, after proceeding north, after you crossed to the opposite side what was the condition of pedestrian traffic as you came south on Elm Street?

A. Well, I would call it about the same as going in the other direction.

Q. Mr. Lundberg, what was the distance between you and the next person in front of you, approximately?

A. Well, I should say on an average of fifteen feet.

Q. Whether or not you could see the first person in front of the person in front of you?

A. I could.

Q. Approximately what was the distance between that person and the second person in front of you?

A. Well, they were very equally divided. I should say the same distance.

Q. Approximately how many people could you see in that line of information marchers as you proceeded on Elm Street?

[fol. 148] A. Well, by the banners and placards and so on I could discern very distinctly I should say seven or eight.

Q. Whether or not they were close together?

A. I should say not.

Q. Approximately as you saw them, the persons and the banners, approximately how far apart do you say those marchers were whom you could see?

A. Well I would have to estimate to the best of my ability—from ten to fifteen feet.

Q. They were not close together?

A. No, they were not.

Q. Any of them that you could see?

A. No, they were not.

Q. As you saw them turn and—you say you went up a short street, went some distance up Elm Street and a short distance up some street and turned, and came back and across Elm Street?

A. That is right.

Q. I understand you were in the rear. Now what was the condition of marchers as you saw them when you turned and came south on Elm Street—what was the distance between them?

A. I didn't notice.

Q. As you proceeded south on Elm Street, what was the condition of traffic on the sidewalks?

A. Very ordinary. There was no congestion of traffic; no difficulty getting through there.

Q. Was it light or heavy?

A. It was light, I would call it.

Q. Now, what if anything happened to you as you proceeded south on Elm Street?

A. Well, I should say it was about two blocks from the police box, I think at the corner of Elm Street and Market Street a man in plain clothes appeared, and at the rear end of the march he walked back and forth gesticulating with his hands telling us we couldn't put out these handbills on the street. A man in shirt sleeves, wearing a straw hat.

Q. Yes. What else?

A. I did not pay attention to the gentleman.

Q. Why not?

A. For the simple reason I could not see why any civilian should interfere with the work or have the right to interfere with the work I had come here to do. He says, you can't do that. The next person who extended his hand for a handbill, I gave it to him. With that, this man in his shirt sleeves and straw hat grabbed me by the elbow, my right

elbow, in which I was carrying a placard. In my left hand I was carrying these handbills. He held me with one hand on the elbow. With the other hand he reached over and grabbed these handbills out of my hand, tore them out of my hand, in fact, and crumpled them up. At that point I asked the man to tell me his name, or asked who he was. I also asked him to show his authority for acting as he was doing. He replied, never mind who I am, you come with me to the officer down on the corner, he will tell you who I am.

[fol. 149] Q. Whether or not who appeared to be an officer afterwards in plain clothes and shirt sleeves, whether or not he took you directly to the box?

A. He, together with the officer in uniform?

Q. No, I mean from the time he took the bills from your hand.

A. He escorted me along the curb side of the sidewalk, past the column of marchers of which I had been the rear man, escorted me to the police officer in uniform at the corner, and there the two of them took me in custody and brought me to the police station.

Q. Now, when the officer took these handbills from you, what was the distance between you and the rest of the marchers?

A. At that particular point the line of march had come to a stop. The distance had perhaps because of the fact an officer had stopped it, the line closed up a little. I should say approximately at that point ten feet apart.

Q. I understand when the line on the southerly march was stopped the officer took you by the other marchers down to the box?

A. That's right.

Q. Approximately what was the distance between the marchers when the officer was taking you down to the box—what was the distance between the marchers you passed on the way to the box?

A. I wasn't particularly observing of that. I was being quite forcibly pushed along. I didn't have much opportunity to observe any of them.

Q. Whether or not you observe anything in regard to the other marchers?

A. I paid attention only to those I passed at the rear end. Due to the fact I knew their distance when I started I can say they were eight or ten feet apart.

Q. Those were eight or ten feet apart when they were stopped as you were being taken by the officer down to the box?

A. That's right.

Q After you got to the box what was then done as you remember?

A. While we were waiting for this police wagon this plain clothes man, as I recall him, he volunteered of his own volition to explain to me that he was on his vacation and that was why he was not carrying his badge at the time.

Q. Now, you had never seen this officer before?

A. No, sir.

The Court: What has all this got to do with a parade on Hanover Street, Mr. Barnard?

Mr. Barnard: The appeals are so far as Hanover Street is concerned, it is true, but there are sixty-eight or sixty nine and some of them are charged with being on Hanover Street, and some of them are being charged with being on Concord or Lowell or some other street.

The Court: That is all right, but what difference does it [fol. 150] make if the officer had on a straw hat and no coat? This is consuming a lot of valuable time.

Mr. Barnard: The testimony as I recall is this; the police officers in testifying have stated, have testified they were in close formation. I want to show this person is the person the officer arrested and——

The Court: That is all right, go ahead and show it, but all this testimony as to how the police officer was dressed and if he was on a vacation is not material.

Mr. Barnard: This testimony is relevant as to the distance between these people as they marched, not only before they were arrested but after they were stopped by the police officer.

The Court: Go ahead and show it.

Q. I show you Defendant's Exhibit D and ask whether or not that was the officer who accosted you?

A. Of course he has his back turned, but I should say that looks like his figure.

Q. He had on a straw hat and was in shirt sleeves?

A. Yes.

Q. Whether or not you remember that person as being at the end of the police car?

A. Yes.

Q. You were inside then?

A. That is right.

Q. Now, Mr. Lundberg, whether or not you can tell what you understand is an information march?

A. A march such as is implied by the Jehovah Witnesses.

Mr. Broderick: I object to the "implied by the Jehovah Witnesses."

The Court: Let's get to the facts. If there is any difference between a march or procession and an information march, tell us what that is if you please.

A. May I explain what a parade is first?

Q. Yes, you may explain what a parade is first.

A. According to the definition in Webster's Dictionary it is defined as an ostentation. Ostentation is defined as a vain display. A parade in the ordinary sense of the word as the average mind is impressed by it is a procession of close formation usually, either the line being in single file or there being two or more abreast. A parade is usually held for display purposes, to call attention or to attract attention to themselves. This makes it necessary, of course, to have some regulations to govern the same, and rightly so, and to control traffic. An information march, on the other hand is a procession in single file, well separated, with the object in view of not in any way manner or shape interfering with traffic whether it be pedestrian or vehicular. In order to have an information march, it is necessary to convey information in some manner, whether it be by word of mouth or by printed placards and pamphlets, the purpose of it being [fol. 151] not to attract attention to ones self, but to attract attention to the message that we have to convey to the public. We do this in the interest of the public. In fact, we are commanded to do this. Christ Jesus told his disciples go into the highways—that is your main street—go into the by-ways—that is your side streets—and convey this message, deliver the message to the people in order that they may know in their own interest what they must know to have eternal life.

Q. Why did you not get a permit for that purpose?

Mr. Broderick: Just a minute, please.

Mr. Barnard: I will withdraw that question.

Q. Mr. Lundberg, as you approached the corner at which—where the police wagon was or came, which is Market

Street in our city and Elm Street, what if you recollect or recall was the condition of traffic at that location when you arrived there with the officer, the pedestrian traffic?

A. With the exception of the fact that when I was taken in custody there were a few curious passers-by who came close up in order to observe what was going on I presume——

Q. At the time you met the other officer at that corner, approximately how many pedestrians were there at that location?

A. Do you mean on that one corner?

Q. At Market and Elm Streets.

A. Do you mean on that one corner?

Q. On that one corner. Yes.

A. Well, my estimation would be that in addition to some of the, perhaps two or three of the marchers who had been stopped by the police on that particular corner I should say twenty-five people, twenty-five or thirty people, at the most.

Q. You had been marched by the officer from the rear of that line, and the line I understood you to say was stopped—you had been marched from the rear of the line down to the box?

A. That is right.

Q. There was twenty-five there at that time?

A. Yes.

Q. The line had been stopped some time before you arrived there?

A. That is right,

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Are you familiar with pedestrian traffic in Manchester on Saturday night?

A. I cannot say I am. No.

Q. Your answer is you are not?

A. My answer is I am not. That is right.

Q. You wouldn't be able to compare the traffic that Saturday night with general traffic on Saturday nights between six and eight o'clock, would you?

A. No, I couldn't do that.

Q. Are you a resident of New Hampshire?
A. No, sir.
Q. Where do you come from?
A. Massachusetts.
Q. What part of Massachusetts?
[fol. 152] A. West Chelmsford.
Q. Are you a citizen of the United States?
A. I am not, sir.
Q. Did you participate in an information parade?
A. No, sir.
Q. Did you leave the I. O. O. F. Hall that day on Hanover Street, on July 8th?
A. Yes, I did.
Q. That hall is on Hanover Street?
A. Yes.
Q. What did you do after you left the hall?
A. I participated in an information march.
Q. That is what I asked you. Then you did participate in an information march on July 8th?
A. You called it a parade.
Q. Wouldn't you call it a parade?
A. No.
Q. Isn't part of your definition "for display purposes to attract attention?"
A. That is true so far as it goes.
Q. Didn't you attempt to attract attention?
A. Not to ourselves but to the message.
Q. You carried signs and placards on July 8th on Hanover Street for the purpose of attracting attention to someone, to some person or some thing?
A. Not to some one but to some thing.
Q. What do you mean by some thing?
A. The messages on the placards.
Q. The messages on the placards. What do you want to say about the message on the placards? You carried the message on the placards on Hanover Street, didn't you?
A. Yes.
Q. For the purpose of attracting attention?
A. To the message.
Q. For the purpose of attracting attention to the message?
A. That is right.

Q. Attracting attention to the message?
A. Yes.
Q. That message was to the general public?
A. Yes.
Q. That is, it was for display purposes to attract attention?
A. To the message.
Q. To attract attention to a message to the public?
A. Yes.
Q. So that display was for the purpose of attracting the attention of the public?
A. Attracting the message to the public.
Q. That is your definition of a parade?
A. I wouldn't say that.
Q. Would you say a parade is a display for the purpose of attracting attention?
A. To themselves, that is my definition.
Q. To themselves, meaning these things?
A. No, sir. I was giving a definition of a parade at that time, not an information march.
Q. I am not talking about an information march. I am talking about a parade. You took these signs and marched on Hanover Street, and your group was so long you would need a field glass to see the man in front of you?
A. I didn't say that.
Q. Did you see the man who led the parade?
A. No, I didn't.
Q. Then he must have been so far you couldn't see him, you would need field glasses?
A. I didn't look at him.
Q. Whether or not you do recall looking at the man in front of you?
[fol. 153] A. That is right.
Q. If you went up a back street—you did go up a back street?
A. We did go up a back street.
Q. And an officer came and took your leader away from the parade and took him to the police station, do you want the court to believe you didn't even know that?
A. I didn't sir.

Mr. Broderick: That is all.
Mr. Barnard: That is all.

BERTHA BENOIT, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your name?
A. Bertha Benoit.
Q. Where do you live?
A. I live in Nashua, N. H.
Q. What is your occupation?
A. I am one of Jehovah's Witnesses.
Q. Were you here on July 8th, 1939?
A. I was. Yes.
Q. Did you participate in a march?
A. I did.
Q. Do you know the leader—do you know who the person was who was ahead leading that information march?
A. The march I was in?
Q. Yes.
A. Yes. Mr. Chaplinsky.
Q. You heard Mr. Chaplinsky testify?
A. Yes.
Q. Whether or not you know Mr. Moody?
A. Yes.
Q. Whether or not he was in the march with you?
A. Yes.
Q. Now, in what part of the march were you, the middle, the rear or the first part?
A. Oh, about the middle.
Q. What was the space, if you can recall, between you and the next marcher ahead of you?
A. Between fifteen and twenty feet.
Q. Whether or not as you proceeded you could see other marchers ahead of you besides the one immediately in front of you?
A. I didn't look for any.
Q. Whether or not you could see any other marchers in the parade who were ahead of you?
A. Yes, there were several.
Q. Were they in view so that you could see them?
A. Yes.
Q. Whether or not they were close together or far apart as you observed them?
A. They were not close together.

Q. They were not close together. Whether or not you can estimate as you saw them approximately how near were they together, or how far apart, those you could see?

A. Well, the one ahead of me was about thirty feet.

Q. Yes, and the next one?

A. Oh, eight or ten feet.

Q. How about the one, if you could see, that was ahead of that one?

A. I don't know.

Q. Now, whether or not you paraded north on Elm Street?

A. I don't know what is north and south.

[fol. 154] Q. Well, the main street in our city is north the way you are looking at the present time. Elm Street runs north and south; Hanover Street runs east and west. You came from Hanover Street. Is that right?

A. Yes.

Q. What was the condition of traffic on Elm Street, as you proceeded on Elm Street going north—what was the condition of traffic as you observed it?

A. Traffic was light.

Q. On that Saturday night?

A. Yes, on that Saturday night.

Q. Whether or not you remember crossing Elm Street, which is our main street, at some place north of here?

A. Do I remember crossing?

Q. Yes.

A. Yes, we crossed the street.

Q. After you crossed the street you marched back down Elm Street the same way you went up only on the other side of the street. Is that correct?

A. I don't remember.

Q. You said you crossed Elm Street, which is the main street?

A. Yes.

Q. What was the condition of traffic as you proceeded, which would be south?

A. It was light.

Q. Whether or not your march was stopped at any time, and if you know, where?

A. Our line of march was stopped, but I don't remember where.

Q. Whether or not you know where the City Hall is?

A. I don't.

Q. Do you know where Hanover Street *it*?

A. Yes, I do.

Q. The City Hall is directly opposite Hanover Street. Hanover Street is where the Odd Fellows Hall is. You came west. The City Hall is right at the foot of that street. Whether or not to your knowledge you were stopped at that location, the marchers were stopped at that location?

A. Well, I don't remember. I don't know.

Q. Whether or not you can state what the condition of traffic was as you came down Elm Street?

A. The traffic was light there.

Q. Whether or not you remember crossing Elm Street again after you came down to what is our City Hall, which is at the foot of Hanover St.?

A. We crossed only once before the officer accosted us, before he stopped us.

Q. Now, after the officer accosted you did you go across the street?

A. We followed the officer across the street.

Q. Now, approximately what was the space between you and the other marchers ahead of you at the time you were following the officer?

A. Well, we kept far apart even though the officer told us to get closer together.

Q. The officer told you to get closer together?

A. Yes.

Q. But you kept far apart?

A. Yes.

Mr. Barnard: You may inquire.

[fol. 155] Cross-examination.

By Mr. Broderick:

Q. Your name is Mrs. Bertha Benoit?

A. Yes, it is.

Q. Are you a minister of the gospel?

A. I am one of Jehovah's Witnesses.

Q. Are you a minister of the gospel?

A. Well, I am one of Jehovah's Witnesses.

Q. Did you participate in an information march on Hanover Street on July 8th?

A. Yes.

Q. Did you have a license?
A. Yes.
Q. Permission?
A. Yes.
Q. Aside from Jehovah's permission did you have a license to parade?
A. A commandment from God.
Q. The person in front of you was about thirty feet?
A. I didn't measure it but that is what I would say it was about.
Q. How many were in that information march?
A. I think eighteen.
Q. Would you say the distance between all of them was thirty feet?
A. No, I can't say that.
Q. Well, give us your best judgment. Well, how far was the man in front of you from where you are standing?
A. It wasn't a man, it was a woman.
Q. How far in front of where you are now was that woman, with reference to anything in this room?
A. About where that man is sitting at that table.
Q. Do you mean your attorney?
A. Yes.

Mr. Broderick: That is all.
Mr. Barnard: That is all.

NAPOLEON ISABEL, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. Napoleon Isabel.
Q. Where do you reside?
A. 206 Wilson Street, Manchester.
Q. What is your occupation?
A. An ordained minister of the gospel.
Q. Whether or not you have any other occupation?
A. I am by trade a shoe worker; I work in shoe shops.
Q. Whether or not—as an ordained minister of the gospel how do you work?

A. How do I work as a minister of the gospel?

Q. Yes, spare time or full time?

A. That is spare time.

Q. You are employed as a shoe worker?

A. Yes.

Q. Your spare time you put in as an ordained minister of the gospel?

A. Yes, sir.

Q. Well, you are one of Jehovah's Witnesses?

A. I am.

Q. Whether or not you participated in an information march July 8th?

A. On July 8th last I did participate in an information march.

Q. In whose section or group were you?

A. Mr. Paquette's.

Q. Mr. Paquette's section was the first one that went out?

A. He was, sir.

Q. You left Hanover Street?

[fol. 156] A. We left Odd Fellows Hall on Hanover Street.

Q. And proceeded in what direction?

A. East on Hanover Street.

Q. What was the condition of traffic?

A. The condition of traffic as I recall that night was light, very light.

Q. In what part of the information march were you located?

A. I was second man in line.

Q. Whether or not while you were second man—what was the distance between you and the person in front of you?

A. Mr. Paquette walked out first. He was approximately from fifteen to eighteen feet in front of me.

Q. Whether or not you saw any of the other marchers in the information march you were in at any time after you left the hall?

A. Yes, I knew there was somebody in back of me doing the same work as I was doing.

Q. You don't know the distance that person was in back of you?

A. I couldn't say, sir.

Q. You say that it is your spare time you put in on this work as a Jehovah's Witness?

A. Yes, this work of preaching the gospel comes first in my mind, that is my first thought in my mind, preaching the gospel, but I have to earn a living for myself and my family.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Are you married, Mr. Isabel?
A. I am.
Q. Do you work steady as a shoe worker?
A. Not very steady.
Q. Did you work on July 8th as a shoe worker?
A. No. July 8th was a Saturday and I don't work Saturdays.
Q. You don't work on Saturdays?
A. No.
Q. You are married and you are a shoe worker and you preach the gospel on the side?
A. In my spare time, yes, sir.
Q. What is your spare time?
A. Days I don't work and Saturdays; days I have off for myself and evenings, like that night, July 8th.
Q. What time do you spend with your family?
A. With my family I spend as much time as I can.
Q. You say traffic was light. Did you say very light?
A. Yes.
Q. The streets were almost deserted that night?
A. Well, I didn't walk very long. We were accosted on Chestnut Street, and it didn't give us much distance, but I should say on the east side of Hanover Street where we walked was approximately eight or ten people.
Q. Including outside the post office?
A. No, on the side I was on.
Q. The post office is across the street?
A. Yes, the post office is across the street.
Q. The post office is open on Saturday night?
A. I believe it is.
Q. Did you look across to see if there was any people there?
[fol. 157] A. No, I don't do that. I just watched my distance from the man ahead of me.

Q. All you did was watch the man ahead of you?
A. Yes.
Q. You were second man in line?
A. I was.
Q. You don't know the distance apart they were in back of you?
A. I couldn't say the distance of everybody. I know the one next to me, right next to me after—you know what I mean?
Q. Back of you?
A. Yes,—a short distance.
Q. When you testified to Mr. Barnard you said you didn't look back and you didn't know the distance the people in back of you were parading?
A. Do you mean everybody?
Q. Everybody or anybody.
A. No, I didn't.
Q. There was a man in front of you?
A. Yes.
Q. All you can tell is the distance between you and the man in front of you?
A. Yes.
Q. How long have you lived in Manchester?
A. I was born in Manchester.
Q. Do you know why Jehovah's Witnesses selected this Saturday night?
A. I don't know why they did. This march consists of part of our worship of God.
Q. Will you tell me, please, why the Witnesses selected Saturday night for an information march? Isn't it because it was the busiest night of the week?
A. It is one of the busiest nights of the week.
Q. You know it is the busiest night of the week, as a resident of Manchester who was brought up here?
A. Yes; Thursdays and Saturdays are the nights the stores are open.
Q. There is no question about that?
A. No.
Q. You have been on Hanover Street many, many times?
A. Yes.
Q. Can you recall any single Saturday night in the last

five years when you saw less than fifty people on that corner?

A. No, I wouldn't say that.

Q. You can't recall any time?

A. No, I can't. No, sir.

Q. You did march on Hanover Street this night?

A. Yes. I participated in an information march.

Q. Did you have a license?

A. A license from a man, no, I didn't have a license from a man. I am an ordained minister of the gospel and I obey God's commands.

Q. My question is did you have a license, aside from Jehovah's. Did you have a license from the State of New Hampshire?

A. I didn't. No, I didn't.

Q. Were you taken to the station that night?

A. Yes, I was.

Q. Were you ever taken to the station before that night for the commission of any crime?

A. Do I have to answer that question?

The Court: I don't think the question is admissible, Mr. Broderick.

Mr. Broderick: It may be withdrawn. That is all.

Redirect examination.

By Mr. Barnard:

[fol. 158] Q. This particular Saturday night, Mr. Isabel, what was the condition of the weather as you recall it?

A. Personally I was in my shirt sleeves. It was awfully warm. A hot day. A hot evening.

Q. When you came out of Odd Fellows Hall and proceeded east on Hanover Street, what was the condition of pedestrian traffic as you came out of the hall and proceeded on to Chestnut Street?

The Court: Hasn't that been answered?

Mr. Barnard: I would like to have him tell how many people were there.

The Court: Hasn't that been answered? He said it was very light.

Mr. Barnard: All right. That is all.

MILTON LIEBY, sworn by Mr. Barnard.

Direct examination.

By Mr. Barnard:

Q. What is your full name?
A. Milton L. Lieby.
Q. Where do you reside?
A. 743 Lake Avenue, Manchester.
Q. What is your occupation?
A. I am an ordained minister of the gospel one of Jehovah's Witnesses.
Q. Whether or not on July 8th, 1939 you participated in an information march of Jehovah's Witnesses in Manchester?
A. I did.
Q. Just what part did you take in that work?
A. Well, I arranged with information march with others. I prepared the directions they would go, and also informed them of the instructions from the Watch Tower Bible and Tract Society, which is the recognized——

The Court: What did you do?

A. I brought to the attention of Jehovah's Witnesses, those who participated, the direction they should go and also the spacing between each participant.
Q. Did you personally see to the spacing of the participants in that information parade of the first group that went out?
A. Well, Walter Chaplinsky spaced them, but they had been instructed before they went out by me to do as the society instructed them, to keep fifteen feet apart.
Q. They were instructed by you. Now, Mr. Lieby, whether or not prior to this march had you gone to the police station with any person?
A. I did. I went with Mr. Cox.
Q. Approximately what time was that?
A. About 6:30.
Q. What was, if you know, the purpose of you and Mr. Cox going to the police station?
A. Well, it was a courtesy extended to the police to inform them we were going to have information marches on the streets of Manchester.
Q. Did you explain what you were going to do?

[fol. 159] A. We were going to have placards advertising a meeting to be held the next evening in Odd Fellows Hall.

Q. What was said, if anything, to you by the police at that time?

A. Lieutenant Manning seemed to direct his attention to Brother Cox, because of his knowledge of his residence here, he took his name and address and asked him if he was a leader. We had told him we were Jehovah's Witnesses. Mr. Cox then turned to me and asked if he was a leader. Of course we have no leaders on earth. The Lord is our leader. The Watch Tower Bible and Tract Society direct our work.

The Court: What was said at the station is the question.

A. Well, Lieutenant Manning wanted to know if we had a permit to go out and hold a parade. We informed we had—we were not going out on a parade. My recollection of what was said isn't so great because I was there just for the purpose of informing the police that we were going out so that if anybody should telephone to them of what was going on they would know what was happening.

Q. Did you leave the police station with Mr. Cox? After you had the conference with Lieutenant Manning did you leave the police station?

A. Yes, sir.

Q. When you left the police station whether or not you left alone or in company with Mr. Cox?

A. With Mr. Cox.

Q. You both left together?

A. Yes.

Q. I understood you to say you participated in this information march. What group were you in?

A. I was in the last group.

Q. That is the group that was later held up by what officer, if you know?

A. Why, Officer Ahern signalled me to turn up to the police station at West Merrimack Street. There was a traffic light ahead of me, so I stood in the gutterway for I should judge a minute.

Q. Officer Ahern held you up?

A. He flagged me and motioned me to the station.

Q. There is a picture which is introduced here as Defendant's Exhibit B. Now, in that picture is Officer Hickey, it has been testified to, Mr. Cox and a person in front of them.

Mr. Broderick: It is agreed that person is this respondent. There is no need of going through that picture at all.

Mr. Barnard: All right. That is all right.

Q. Whether or not Mr. Ahern said anything more to you than to motion you to the station?

A. That's all he done, he just says, up to the station.

Q. He didn't accompany you?

A. No.

Q. Whether or not you know where was Mr. Cox at the time Officer Ahern——

A. No, I didn't pay any attention.

Q. If I understand you correctly the groups were sent out by you?

[fol. 160] A. Yes, I had arranged as to the number in the groups and the direction they would take. They were spaced by somebody else because I was busy doing other things.

Q. You were the head of the group held up by Officer Hickey and Officer Ahern. Is that right?

A. Yes.

Q. You did later go to the station?

A. Yes, I did.

Mr. Barnard: You may inquire.

Cross-examination.

By Mr. Broderick:

Q. Mr. Lieby, how old are you?

A. Forty-two.

Q. Where did you say you reside?

A. 743 Lake Ave., Manchester.

Q. How long have you resided there?

A. About five months.

Q. Where did you live before that?

A. I am from Pennsylvania but I have been traveling for five years from city to city.

Q. Do you claim Manchester as your residence?

A. At the present time. I might leave. I don't know when. It is not permanent.

Q. Your legal residence is in Pennsylvania?

A. That is where I come from, but for three years I haven't been there.

Q. Mahoney, is that, Pennsylvania?

A. Mahoney, Pennsylvania.

Q. Before this parade didn't you call upon Surveyor Kenney for a permit?

A. For a sound car we did.

Q. When was that?

A. About a week before the information march.

Q. You heard Mr. Kenney testify in the Municipal Court?

A. Yes.

Q. You heard him testify to the fact you called upon him for the purpose of obtaining a permit to parade?

A. He didn't say anything of the sort in Municipal Court.

Q. He didn't?

A. No, sir, he didn't mention parade.

Q. You admit you called upon Mr. Kenney some time before the parade?

A. I admit I called upon Mr. Kenney some time before the information march.

Q. You say now it was for a sound truck that you asked a permit for?

A. For a sound car. We have here a sound car.

Q. Why didn't you use the sound car?

A. Because he said in the Municipal court we were not a charitable or politican organization.

Q. Did he refuse you a permit? When you called upon Mr. Kenney for a permit, whether or not he told you to come back later?

A. He told us to come back. Yes.

Q. Did you go back later?

A. No, sir, we didn't go back later.

Q. That was before the parade?

A. That was before the information march. Yes, sir.

Q. Well, before the information march. For the second time, before the information march did you call upon the police—before the parade, I mean before the information [fol. 161] march—for a permit?

A. Just before the information march I went to the police as a matter of courtesy. We did not ask for a permit to do this work. Jehovah God is directing this work. I wouldn't ask mere man for a permit to do his work.

Q. You wouldn't ask mere man for a permit to have an information march?

A. Not for Jehovah God's work.

Q. You wouldn't ask for a permit from the State of New Hampshire to do this work?

A. If it is Jehovah God's work I wouldn't ask for a permit of any man.

Q. There is no dispute about that?

A. There is no dispute about that. No.

Q. Did you march on Hanover Street on July 8th?

A. I was in an information march.

Q. Did you have a license? You said you didn't, didn't you?

A. I didn't.

Q. You called on the police as a courtesy?

A. I called on the police as a courtesy. Yes.

Q. They told you you couldn't march without a permit?

A. He told me we should wait until the next day and see Mr. Kenney.

Q. Yes. You wanted to grant some kind of a courtesy, and when he told you that you ignored it and marched anyway?

A. We went there to inform them.

Q. And they told you not to do it, to wait until the next day and see Mr. Kenney?

A. He said it would be better to wait until the next day.

Q. And see Mr. Kenney?

A. Yes.

Q. Did you see Mr. Kenney?

A. No. We were prepared to go out and march that night.

Q. So you were anything but courteous to the Manchester police?

A. We told them we were going to march.

Q. As you ran out of the station you told them you were going to march anyway?

A. Was it a marathon?

Q. Did you run out of the station?

A. I did not; I walked out.

Q. You told them you were going to march anyway?

A. I certainly did.

Q. You told Lieutenant Manning you were going to march anyway?

A. We told them we were going out on an information march so they would know what we were going to do.

Q. You were the leader?

A. I am not a leader. Christ Jesus is our leader.

Q. Aside from Christ Jesus. You told them the distance

to stand back one from another, you told them where to march and you arranged for placards and banners and so forth, and aside from Christ Jesus you were next in charge, were you not?

A. I am not, the Watch Tower Bible and Tract Society directs this work.

Q. The Watch Tower Bible and Tract Society was not in Manchester that day, was it?

A. We have information from them. They direct the [fol. 162] work through——

Q. I know. You don't recall much of your conversation with Lieutenant Manning?

A. No. I went there. I invited Mr. Cox along, and he centered his attention on Mr. Cox. I was only there to inform the police.

Q. Mr. Manning asked you if you had a permit and you said yes?

A. I said nothing of the sort.

Q. Didn't you say you had a permit from Jehovah?

A. Jehovah is God, and He is directing this work.

Q. And that is what you told Mr. Manning?

A. I didn't say anything of the sort.

Q. What is your residence in Manchester?

A. 743 Lake Avenue.

Q. Who do you live there with?

A. Christos Gravas.

Q. And Mr. Chaplinsky lives there also?

A. No. He lives in Dover at the present time. He did, but recently he moved to Dover.

Q. Did you carry a banner?

A. I had a placard in front of me.

Q. What did it say?

A. Fascism or Freedom.

Q. One of these?

A. Yes.

Q. You didn't have any on back of you?

A. No, we ran out of placards.

Q. Did you also run out of signs?

A. Yes, we ran out of signs completely.

Q. How many did you have all together?

A. There was some hundred and six out on the march.

Q. There was no sign on your back?

A. No, sir.

Q. There was no way anybody looking in that direction could ascertain whether or not you were in that march?

A. I was in front of the marchers.

Q. But there was no sign on back of you?

A. I had handbills in my hands.

Mr. Broderick: I guess that is all, Mr. Lieby.

Mr. Barnard: That is all.

The Defendants rest.

Evidence Closed.

EXCEPTIONS TAKEN DURING THE COURSE OF MR. BRODERICK'S ARGUMENT

—these respondents openly and boldly defied not only the police department of the City of Manchester, defied not only Commissioner Kenney, the man who has the sole and only authority to issue licenses, but defied and openly defied, yes, even on the stand, the laws of the State of New Hampshire.

[fol. 163] Mr. Barnard: I object to that statement as prejudicial.

The Court: It is argumentative. Is it a misstatement of fact here?

Mr. Barnard: I don't think there is any statement of the fact there was any defiance on the part of the defendants.

The Court: There is evidence tending to prove that they did not ask for a license and they did engage in certain activities.

Mr. Barnard: Save our exception.

—law or no law we are going to parade, we are the Witnesses of Jehovah, we are greater than any state law, the state law so far as we are concerned is a joke.

Mr. Barnard: I object to that also as prejudicial, and except.

The Court: All right.

Isn't it fair to assume when the second and third and fourth groups started, they apparently knew the first group was arrested, and what did they do? They continued to march, which is a third indication of their intention to violate the law of the state, marching after they knew the first group was arrested.

Mr. Barnard: There is no evidence that they knew it. Objection and exception.

COMPLAINT AGAINST WILLIS COX, RESPONDENT

To the Justice of the Municipal Court of Manchester, in the County of Hillsborough and State of New Hampshire:

James F. O'Neil, Chief of Police, of Manchester in said County of Hillsborough, complains that Willis Cox of Manchester, in the County aforesaid, on the eighth day of July, in the year of our Lord one thousand nine hundred thirty nine at Manchester, aforesaid, in the County of Hillsborough aforesaid, with force and arms did participate in a certain parade or procession, upon Hanover Street a certain public highway so called, without a special license therefor contrary to the form of the statutes in such case made and pro- [fol. 164] vided, and against the peace and dignity of the state. Wherefore the said complainant prays that the said respondent may be held to answer to this complaint, and that justice may be done in the premises.

James F. O'Neil.

THE STATE OF NEW HAMPSHIRE,
Hillsborough, ss:

July 10, 1939.

Personally appeared the above named complainant, and made oath that the above complaint by him subscribed is, in his belief, true. Before me.

Alfred J. Chretien, Justice.

MOTION TO DISMISS—Filed November 20, 1939

The defendant moves as follows: That the complaint be dismissed and the defendants discharged on the following ground:

1. Chapter 145, section 2-5 Public Laws of New Hampshire so far as it is applied to these defendants is an arbitrary and unreasonable abuse of the police power of the State.

2. Chapter 145, section 2-5 Public Laws of New Hampshire so far as it is applied to these defendants is contrary to and in violation of Article 5, Part First, of the Constitution of the State of New Hampshire; which reads: Every

individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion: provided he doth not disturb the public peace or disturb others in their religious worship.

3. Chapter 145, section 2-5 of the Public Laws of New Hampshire so far as it is applied to these defendants is contrary to and in violation of the First Amendment to the Constitution of the United States, which reads: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

4. Chapter 145, section 2-5 of the Public Laws of New Hampshire so far as it is applied to these defendants is contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States which had the ef- [fol. 165] fect of making the said First Amendment applicable to the States and which reads: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. Chapter 145, section 2-5 of the Public Laws of New Hampshire so far as it is applied to these defendants is contrary to and in violation of Article 22, Part 1 of the Constitution of the State of New Hampshire, which reads: The liberty of the press is essential to the security of freedom in a state: It ought, therefore, to be inviolably preserved.

6. Chapter 145, section 2-5 of the Public Laws of New Hampshire so far as it is applied to these defendants is an unlawful interference with the rights of freedom and liberty guaranteed by the Constitution of the State of New Hampshire and the Constitution of the United States.

7. Chapter 145, section 2-5 of the Public Laws of New Hampshire in so far as it restricts and prohibits the distribution and publication of literature and opinion abridges the freedom of the press contrary to the provisions of said quoted Amendments.

Chapter 145, section 2-5 of the Public Laws of New Hampshire in so far as it prohibits the free exercise of the defendant's religion and the practice thereof by prohibiting the distribution and circulation of information about the defendant's religion abridges the free exercise of religion contrary to the provisions of said quoted Amendments.

Motion denied. The defendants except.

Oscar L. Young, Presiding Justice.

Nov. 20, 1939.

MOTION TO DISMISS FILED WITH THE COURT AT THE CLOSE OF THE STATE'S CASE—10:15 A. M. November 21, 1939

The defendant moves as follows: That the complaint be dismissed and the defendant be discharged upon the following grounds: That the complaint is invalid and does not state facts sufficient to constitute an offense under the law; That the statute in question is invalid and void by reason [fol. 166] that it is in direct conflict with the Constitution of this State and of the United States, in this: that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God; That the statute in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States. That the evidence by prosecution shows defendant is not guilty. The Defendant therefore prays this court to dismiss this case and that he be discharged.

Motion denied. Defendants except.

Oscar L. Young, Presiding Justice.

Nov. 21, 1939.

RESPONDENTS' OFFER TO PROVE FACTS—Filed November 21, 1939

The defendants offer to prove the following facts:

The Jehovah Witnesses are followers of Christ Jesus, each of whom is an ordained minister of the Gospel of God's

Kingdom and sent by Jehovah to do his work and to preach the Gospel as set forth in the Bible at Isaiah 61; 12; Isaiah 43: 10 to 12 and Matthew 24:14. Jehovah's Witnesses are compelled to obey God rather than men as stated in Acts 3:23; Acts 4:19 and Acts 5:29.

In obedi*a*nce to God's Commandments Jehovah's Witnesses preached the Gospel and worshipped God by calling on people at their homes and by group meetings. They exhibit to the people the Message of the Gospel in printed forms such as pamphlets, books, placards and other printed matter and by recorded lectures.

The work is entirely charitable and is prompted by an unselfish desire to teach God's word and to do good to all mankind. The directing organization is the Watch Tower Bible and Tract Society chartered to disseminate Bible Truths.

A march for purposes of information is directed by Joshua 6:15.

The phrase "serve God and Christ the King" to Jehovah's Witnesses means to follow the lead of Jesus Christ in obeying the word of All Mighty God which is given to man as a guide in the Holy Bible.

The phrase religion is a snare and a racket means to Jehovah's Witnesses that religion and christianity are opposed to each other and that christianity is not a religion on the basis of James 1: 26, 27.

[fols. 167-235] The offer is denied because the suggested facts if true have no bearing upon any of the issues in the cases on trial. The defendants except.

Oscar L. Young, Presiding Justice.

MOTION TO DISMISS FILED AT CLOSE OF ALL THE EVIDENCE—11:45 A. M. November 22, 1939

The defendant moves as follows: That the complaint be dismissed and the defendant be discharged upon the following grounds: That upon all the evidence in this case and the law governing the same the prosecution has failed to introduce any evidence whatsoever showing the guilt of the defendant; That upon all the evidence offered and the law in the case the defendant is not guilty and should be discharged.

Motion denied. Defendants except.

Oscar L. Young, Presiding Justice.

LIST OF EXHIBITS

State's Exhibits:

1. Banner.
2. Sandwich sign.
3. Officers' typed report.

Respondents' Exhibits:

A to H inclusive. Photos by Duncan.
I. Handbill.
J. Newspaper photo.
K to P inclusive. Six pamphlets marked for identification.

A true copy.
Attest:
George O. Moran, Clerk of the New Hampshire Supreme Court.

[fol. 236] IN SUPREME COURT OF NEW HAMPSHIRE

3166, Hillsborough

STATE
v.
WILLIS COX

SAME
v.
WALTER CHAPLINSKY

SAME
v.
JOHN KONIDES

SAME
v.
ARVID E. MOODY

SAME
v.
OLIVA PAQUETTE

Complaints, for taking part in a parade or procession on public streets in the City of Manchester without license

therefor as required by Statute (P. L., c. 145, s. 2), the violation of which is made a misdemeanor (Ib., s. 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an "information march". They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and "as close together as it was possible for them to get without interfering with each other's walking" marched on the sidewalks of certain streets, some carrying placards [fol. 237] or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

Manchester had a population of over 75000 in 1930, and there was testimony that on Saturday nights in an hour's time 26000 persons passed one of the intersections where the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required.

Their bill of exceptions was allowed. It presents as legal issues the construction of the statute and its validity under the state and federal constitutions.

Transferred by Young, J.

Thomas P. Cheney, Attorney-General, Frank R. Kenison, Assistant Attorney-General, and J. Vincent Broderick, County Solicitor, (Mr. Kenison orally), for the State.

Charles D. Barnard, Charles H. Barnard, Joseph F. Rutherford (of New York) and Hayden Covington (of New York) (Mr. Covington orally), for the defendants.

OPINION—June 20, 1940

ALLEN, C. J.:

The statute (P. L., c. 145, s. 2) upon which the defendants were found guilty is this: "No theatrical or dramatic representation shall be performed or exhibited, and no parade [fol. 238] or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for."

A succeeding section (3) provides that a city may create a licensing board to be appointed by the city government, to "have delegated powers to investigate and decide the question of granting licenses" and to "grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers". Another section (4) requires all special licenses to be in writing and "to specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting", and establishes a range of fees from a nominal amount to $300. The section ensuing (5) prescribes the penalty for violation of the statute.

The contention that the defendants were not guilty under the terms of the statute has no merit. As the complaints charged, they "participated in a certain parade or procession". A succession of persons substantial in number walked in formal march with signs and placards. This was a parade or procession, such as is required by the statute to be licensed. It was a march in formation, and its advertising and informatory purpose did not make it otherwise. Its single-file order did not destroy its character as a procession, nor did its purpose to publish information take it out of the purview of the statute. Each group was an organized unit under leadership and direction. It is immaterial that its tactics were few and simple. It is enough that [fol. 239] it proceeded in ordered and close file as a collective body of persons on the city streets. Whether it could be called an assembly, being in motion rather than stationary, is also immaterial. If it might be, it remained a parade or procession as the statute employs the words. Clearly, the defendants took part in a parade or procession without a license therefor.

The issue whether the act which the defendants violated is void under the state constitution may be readily and briefly stated. The state bill of rights (Constn., Pt. I. Art. 22) has this provision: "The *liberty of the press* is essential to the security of fredom in a state: It ought, therefore to be inviolably preserved". The right to worship God in any manner is also held to be inalienable, provided the public peace, or others in their religious worship, are not disturbed. Ib., Pt. I, Art. 5. Whether these articles serve to render the act a nullity, or at least inapplicable to the facts of the case, is to be determined. Decision turns upon the force and effect of another article of the bill of rights (31) reading as follows: "The legislature shall assemble for the redress of public grievances, and for making such laws as the public good may require". Another provision of the constitution (Constn., Pt. II. Art. 5) confirms the grant of power to the legislature by vesting it with "full power and authority * * * to ordain * * * all manner of wholesome and reasonable * * * laws * * * directions and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, * * * ". The defendants contend that the [fol. 240] legislature has overstepped itself in enacting the law as an exercise of the protective power.

While highways are public, they are subject to public control. The public have no vested rights to their use, and it follows that the use is such as the state permits, and that any conditions of permission are proper, provided they are not forbidden by the constitution.

"* * * the operation of an automobile upon the public highways is not a right but only a privilege (*Comm.* v. *Kingsbury*, 199 Mass. 542): and that which the state may withhold, it may grant upon condition." State v. Sterrin, 75 N. H. 220, 222, cited in Opinion of the Justices, 81 N. H. 566, 567, 568. "Classification between those who may and who may not have the privilege of highway use of motor vehicles must be reasonable, but the privilege itself need not be:" Rosenblum v. Griffin, 89 N. H. 314, 319.

The use is for travel, and the travel includes its incidents. The highway "easement is bought by the public when it is reasonably necessary for the public accommodation. The

right, when bought, is a right of reasonably using the land as a way." Varney v. Manchester, 58 N. H. 430, 432. "Travelers upon public highways have a right to do all acts incident to 'a viatic use of the way.'" Lydston v. Company, 75 N. H. 23.

While travel may be with any end in view, a highway itself may be used only for the travel. The state may provide measures to prevent its use for other purposes, and to secure its use for travel only. It may regulate travel, and, since the right to travel is a privilege, may forbid any par- [fol. 241] ticular form of travel, or may permit it under such terms as it may impose, within constitutional bounds. The state is in the position of a landowner in control of the use of a highway, except that discrimination must be fair and that no essential rights be impaired. At its will it may shut off a highway from use and it may limit the travel uses to certain forms of use. "The state has authority to make regulations as to the time, mode and circumstances under which parties shall assert, enjoy, or exercise their rights (of highway use) without coming in conflict with any of those constitutional principles which are established for the protection of private rights and property." State v. White, 64 N. H. 48, 50, in which case a statute forbidding drum beating in the compact part of a town was held valid and applicable to the defendants who beat a drum "in accordance with their sense of religious duty, and in worshipping God according to the dictates of their own consciences", and without "disturbing the public peace or the religious worship of others". "A reasonable measure of prevention to avoid disturbance is not an infringement of constitutional rights." Ib. 50. The permission of highway use must not be upon a condition restricting or abridging freedom of speech or writing, but impositions of conditions respecting the freedom are valid if they reasonably serve to prevent any substantial disturbance which is an interference of normal travel.

Undoubtedly the right to travel imparts the right of communication from one while a traveler to others, and travel may be by persons congregated in a group; but while the reasonable incidents of travel are a part of it, the incidents do not themselves create or imply the right to travel as [fol. 242] flowing from them. The right of speech is an incident of the right of highway travel, but the right of highway travel is not inherent in the right of speech.

In analysis of the statute under consideration, the normal and well established rules of construction with reference to constitutional validity are to be employed. It is assumed that the legislature intended to enact no invalid laws. It follows that when a law is capable of two constructions, one giving, and the other not giving, constitutional effect to it, the construction favoring validity is adopted. It is only when the language and terms of the act do not reasonably permit such a construction that the act is held unconstitutional. "When a statute is fairly susceptible of two interpretations, one rendering it constitutional and one not, that construction will ordinarily be adopted which will uphold its constitutionality. The presumption is that the legislature intended to keep within the limits of both the federal and state constitution, and to restrict the operation of its enactments to cases where they will have effect consistently therewith." Haselton v. Stage Lines, 82 N. H. 327, 329. " * * * when a statute unsustainable in its literal terms is valid in some of its applications but not in others, it is to be read as though the latter were excepted from its operation". Woolf v. Fuller, 87 N. H. 64, 69, and cases cited. "When a statute may constitutionally operate in certain cases, but cannot in others which it in terms embraces, it will be upheld, unless evidently intended to conflict with the constitution, and construed not to apply to the latter class of cases, which 'are as fully and [fol. 243] effectually excepted by necessary implication, as if the statute had contained an express proviso that it should not extend or apply to such cases'. *Opinion of the Justices,* 41 N. H. 555; *Kennett's Petition,* 24 N. H. 141." Cheshire &c. Co. v. State, 63 N. H. 167, 169.

While "words, provisions or modifications" may not at all events be read into a law to the end that it may be clothed with constitutional validity (State v. Gerry, 68 N. H. 495, 503), yet when the language used fairly admits of a construction which endows the law with validity, that construction will be adopted in preference to an opposing construction. Not to read in what the language implies is to amend or repeal. And judicial disregard of the express meaning is equally, if not more, serious as an attempt to legislate. Certainly a stated bestowal of "delegated power" is one of subsisting power, only, with no attempt to add thereto or to substitute therefor a power not delegable because not possessed. A grant expressed to be of only what

may be granted cannot purport, in addition or substitution, a grant beyond power to grant.

In application of these well settled principles of construction to the case here, if the clause of the act requiring a license for all open-air public meetings upon land contiguous to a highway is invalid, the invalidity is isolated and ineffective to nullify the act in respect to its requirements in other situations designated by it.

Also, the act is implicit in its requirement that the licensing authority act reasonably in granting or denying licenses, and with reference to the object of public order on the public ways. If it does not in express terms "make comfort or convenience in the use of the streets * * * the standard of official action" (Hague v. Committee &c. 307 [fol. 244] U. S. 496, 516), the necessary inference is that it does, based upon the presumption in favor of the validity of legislation as reenforced by the express provision of the act bestowing "delegated powers" upon the authority, as a grant intended to be only of due legislative power which may properly be delegated. The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has, and the legislature attempted to delegate no power it did not possess.

The delegation of power is sustainable as one in connection with municipal government. That the licensing authority may be the local tribunal to administer the act and, as incidental to the administration, prescribe such rules and regulations for its due enforcement as it might think proper to adopt, rather than the governing councils of the city, is immaterial. The legislature's control over municipal corporations in such respect is undoubted. Amyot v. Caron, 88 N. H. 394.

The regulation in respect to license fees is not unreasonable. The range is from $300. to a nominal amount. The act is construed to require a reasonable fixing of the amount of the fee. The charge for a circus parade or a celebration procession of length, each drawing crowds of observ-

ers, would take into account the greater public expense of [fol. 245] policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted. The fee is not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed.

Application for a permit gives the public authorities notice in advance of any parade or procession for which license may be granted, thus giving opportunity for its proper policing. And the license, in fixing the time and place of a parade or procession, serves to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder.

After all, the difference between a circus parade and the defendants' marching would seem to be only of degree, in respect to free speech and writing. The circus parade advertises its show to follow, with barkers using loud-speakers to announce the features of the show. The "information march" of the defendants was less colorful, but the essential purpose of gaining hearers or readers was the same. The difference between the objective of material profit and the exercise of religious freedom is of constitutional consequence, but the difference is observed in the requirements of the terms of the act which are necessarily implied.

In considering the case in the light of these views, it is to be borne in mind that no claim is made of any non-compliance with the act by any governmental agency. The defendants admit its non-observance by them, but say that they have not committed an offence against the state, since the enforcement of the act would violate the constitution. [fol. 246] Their sole position is that the act is a nullity because it defies the constitutional guaranty of individual freedom in respect to their right to march in the manner they did and for the purpose they had.

It is held that the act is a due exercise of the police power under the state constitution. The state's control over its highways entitles it to regulate their use for travel. Special uses for whatever purposes may be permitted upon such reasonable restrictions as may be prescribed and as are not unfairly discriminatory. The privilege of highway use for travel is not absolute. Maintenance of order, avoidance of congestion, and adjustment of different kinds of travel,

are proper objects of legislative consideration in the regulation of use.

It is thought significant that the act prescribing no measures for controlling or suppressing the publication on the highways of facts and opinions, either by speech or by writing. Communication by the distribution of literature or by the display of placards and signs is in no respect regulated by it. The regulation, in respect to highways, is only of parades and processions in their generality. Freedom of publication by speech or writing is under no restraint. The act is applicable only to organized formations of persons using the highways. The defendants separately, or collectively in groups not constituting a parade or procession, are under no contemplation of the act. At most, the parade or procession was a dramatization of their enterprise, designed to make it spectacular and thus attract attention. No audience to hear any speakers was sought, [fol. 247] since no speaking was planned. It apparently was thought that the literature would be more noticed and impressive by a striking manner of its publication, and the time and place chosen were designed to have a large number of readers encountered. The interference with liberty of speech and writing seems slight. The distribution of pamphlets and folders by the groups traveling in unorganized fashion would have had as large a circulation, and parades and signs carried by members of the groups not in marching formation would have been as conspicuous, as published by them while in parade or procession. In respect to the placards and signs, some only advertised a lecture to be given at a future date. Part of the others were concededly not in good taste. If short of blasphemy, the motto or slogan that religion is a snare and a racket was an offence to compelled readers, whose willingness to read was not consulted. Freedom of speech is not understood to go so far as to require any hearers to listen, or of writing as to force it to be read by those confronted with it. The right to worship is not a right to disturb others in their worship, and the right to free speech and writing is not one to force speech or writing on an unwilling audience or readers. It is not unreasonable to say that the sentiment displayed had a provocative tendency to a disturbance of the peace in view of the manner, place and time of its publication.

The courts must uphold the regulations if they are within

the confines of reasonableness. Conceding that a highway use in furtherance of divine worship or to advertise and publish, by speech or writing, one's thoughts and views may [fol. 248] be less reasonably subjected to control than a use for other reasons, it is not considered reasonable to hold that such special uses are subject to no control or that other highway travelers have only subordinate rights to such a special use. The public good for which legislation may be enacted is the good of all, and the state constitution recognizes no favored classes. Freedom to worship God, of speech, and of the press, is not abridged by the act, so far as the state constitution protects that freedom. An ordered freedom is all that the guaranty of individual rights secures. Maintenance of order neither abridges nor denies freedom.

The defendants had a right, under the act, to a license to march when, where and as they did, if after a required investigation it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such conditions or changes in time, place and manner as would avoid disturbance. They made no application for a license, and hence may not say that any right was denied them.

The granting or withholding of licenses is of an administrative character, to depend upon such tests of legislation or administrative regulations conformable to the legislation and in aid of enforcement, as are employed to find if the needs of public convenience are met and satisfied; if the public convenience is not subjected to undue disturbance, the license must issue.

The measure of control fixed by the act is permissible in the public interest without invasion of the individual rights, and as a due exercise of legislative powers granted by the state constitutions, the act is sustained. The result would be no different if the excluded evidence had been received [fol. 249] as explanatory of the reasons entertained by the defendants for engaging in the parade or procession and for their disregard of the act. A religious doctrine that divine law should be obeyed rather than man's law when the two conflict may be entitled to statement but not to observance.

The question of the validity of the act under the federal constitution is more difficult. Recent decisions of the United States Supreme Court (Lovell v. City of Griffin, 303 U. S.

444; Hague v. Committee &c, 307 U. S. 496; Schneider v. State, 308 U. S. 147; Thornhill v. Alabama, 84 U. S. S. C. Law Ed. 659; Carlson v. California, 84 U. S. S. C. Law Ed. 668; Cantwell v. Connecticut, No. 632, Oct. 1939 Term) are of pertinent bearing. In all of them the protective power was held improperly exerted, and the question arises whether the special features of the case here are sufficiently in contrast and distinction from them to require a conclusion of a due exercise of the power. "And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights". Schneider v. State, supra. "As in other cases when a broad distinction is admitted, it ultimately becomes necessary to draw a line, and the determination of that line in nice cases always seems somewhat technical, but still the line must be drawn". Ellis v. United States, 206 U. S. 246, 260.

For the state courts the difficulty is enhanced by the uncertainty of the construction which may be placed upon the act by the federal courts. The local construction by the state court of last resort will receive by them "careful and respectful consideration" (Coombs v. Getz, 285 U. S. [fol. 250] 434, 441) and "Great weight" (Higginbotham v. Baton Rouge, 306 U. S. 535, 539), if the rule in cases presenting the issue of a violation of the article in the federal constitution forbidding the impairment of contract obligations is followed in cases dependent for decision upon individual rights protected by that instrument. But the local construction has no compelling authority, and forecast and prediction of the federal construction seem in some aspects an anomalous employment of the judicial function. However, there is the requirement, as an incident of the requirement to pass upon the federal question, and the conclusion may be accorded some consideration as authority. The state courts may not assume that their own construction of the local law will not be followed.

Approaching the question from this standpoint, it is thought that there are real and substantial differences existing between the case here and those of recent decision as above cited and relieving the act here under examination from the ban of the federal constitution, at least as to the offence charged against the defendants. The language of

the statute discloses no purpose to impose a "previous restraint" upon freedom of the press or of speech as in Lovell v. Griffin; Schneider v. State; Thornhill v. Alabama and Carlson v. California, supra, nor to hamper freedom of assembly as in Hague v. Committee, etc., supra. No censorship of comments on matters of public concern, to which reference is made in the Thornhill case, is authorized or threatened and a fortiori no censorship of religion is contemplated as in Cantwell v. Connecticut, supra. Neither is there any basis in the present case for a claim of administrative discrimination against these defendants or the religious group of which they are members by the officers charged with the enforcement of the act, analogous to that [fol. 251] which was found to exist in the Hague case, supra.

In essential aspects the federal guaranties of freedom of speech, and of the press are the same as those of the state. The rights guaranteed are inviolable and may not be abridged. The federal cases are thought to point out an emphasis for them under the federal constitution in some superiority of merit and importance over those other guaranties, with the result of the need of closer scrutiny in any attempt to subject them to the exercise of the protective power. But it is understood that the protective power may be employed for their security and furtherance; and that to promote their function and operation regulation to coordinate them with relations and conditions which they may encounter may be justified. If the regulation is in part or altogether for some other objective of public concern, it is not invalid if freedom of speech or of the press is not thereby abridged. It may provide for a due and orderly manner of enjoyment. A license to permit its enjoyment may not be required as a form of censorship, but a license to permit its enjoyment in fair adjustment with the enjoyment of other relations and conditions is not understood to be under the ban of the federal constitution. How far the right to freedom of speech spells the right to congregate on the public highways for oral communication does not here seem to require answer. The defendants' conduct was wholly in distributing and displaying matter to be read, and they had no objective of oral address and being heard. And if a parade or procession is to be regarded as an assembly in motion, the right to conduct or engage in it is "not absolute, but relative, and must be exercised in subordination

to the general comfort and convenience, and in consonance with peace and good order." Hague v. Committee &c., supra, 516.

Granting that the federal guaranty of freedom of speech [fol. 252] and writing demands its recognition as an incident of the right of highway use, none of the federal cases cited deny the right of reasonable regulation of the exercise of the guaranteed right when it is enjoyed by persons while upon the highways. In the Lovell case a distribution of writings was attempted to be placed under control in arbitrary discretion, without reference to "the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets". Lovell v. Griffin, supra, 451.

"Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs". Minersville School District v. Gobitis, U. S. Sup. Ct., No. 690, Oct. 1939 Term. It would seem a play of imagination to find in the statute any purpose to restrain the freedom of religion, or its exercise through speech or writing.

It is said in some of the cases that an act or ordinance drawn more narrowly would be a valid exercise of the protective power, without abridging the guaranties in question. It is thought that the act here attacked and as locally construed permits no abridgment of the guaranties. Enforcement of the act according to its requirements as found to be contained in it would leave no play or room for the exercise of a too wide discretion. If in enforcement the requirements were not observed, the action would be arbitrary in the particular case. But enforcement of a law is administrative in character, and improper enforcement is disobedience of the law, which, if it makes conduct invalid, does not invalidate the law. If the act in question stated in express and explicit terms the requirements held to be inherent in [fol. 253] it, it is not perceived how it would imperil any rights of speech, writing or worship. The discretion delegated has no wider range than the legislature itself might exercise, and in the nature of things, as a practical necessity, the grant or denial of a license must rest upon decision arrived at with the employment of some discretion. The requirements of comfortable and convenient public travel in a particular case are not determinable by formula,

or, for each case, in advance of presentation of its facts, but by discretionary adjustment within the mandates defining permissible considerations.

It is not thought to be of orderly propriety to assume, by extended analysis, to state the exact and precise limits and lines fixed by the federal cases between regulation and invasion. The circumstances of a particular case are factors bearing on the side of the line it falls. It is thought that the local act as analysed in application to the state constitution does not conflict with the federal constitution as interpreted by the federal courts.

Holding, as is necessary, in the absence of a federal construction of the act, that it is to have the same construction in connection with the federal constitution as in connection with the state bill of rights, the act is considered valid under the federal as well as under the state constitution.

Exceptions overruled.

All concurred.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 254] IN SUPREME COURT OF NEW HAMPSHIRE

No. 3166

STATE

v.

WILLIS COX, App't, & a.

DOCKET ENTRIES

J. Vincent Broderick, Attorney-General, Attorneys for State of New Hampshire.

Barnard & Barnard, Hayden C. Covington (New York), Attorneys for defendants.

Hillsborough: From Sept. T. '39. Entered March 20, '40.

Pl'ff's brief by May 4, '40; d'f't's brief by Apr. 19, '40; hearing May Ses., '40.

Defendant's brief filed April 11, '40.

Plaintiff's brief filed May 6, '40.

Argued May Session, '40.

JUDGMENT

June 20, '40. Allen, C. J. Exceptions overruled.
July 3, '40. Time extended in which to file motion for rehearing until July 13, '40.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 255] [File endorsement omitted]

[fol. 256] UNITED STATES SUPREME COURT, OCTOBER TERM, 1940

APPEAL FROM NEW HAMPSHIRE SUPREME COURT

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ARVID E. MOODY, and OVILA PAQUETTE, Appellants,

v.

STATE OF NEW HAMPSHIRE, Respondent

PETITION FOR APPEAL, STATEMENT, ASSIGNMENTS OF ERROR AND PRAYER FOR REVERSAL—Filed September 3, 1940

PETITION FOR APPEAL

Considering themselves aggrieved by the final decision of the New Hampshire Supreme Court in the above entitled cause, the appellants therein, Willis Cox, Walter Chaplinsky, John Konides, Arvid E. Moody, and Ovila Paquette, hereby pray that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of a statute of the State of New Hampshire, to wit,

Chapter 145, Section 2 to 5, of the Public Laws of the State of New Hampshire, which reads:

[fol. 257] Chapter 145, Public Laws of New Hampshire

Section 2. Theatricals: Parades: Meetings.

No theatrical or dramatic presentation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

Section 3. Licensing Board.

Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

Section 4. Licenses: Fees.

Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

Section 5. Penalty.

If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter.

which statute was passed and approved by the Legislature of the State of New Hampshire, is drawn in question upon [fol. 258] the ground that said statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States. The final decision of the Supreme Court

in the last resort in all causes in the State of New Hampshire in which a decision could be had, is in favor of the validity of said statute. Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U. S. C., sec. 354]), the appellants respectfully show this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The said Supreme Court in the last resort in all causes in the State of New Hampshire rendered its decision herein on the twentieth day of June 1940, and thereby the Supreme Court of the State of New Hampshire in its decision herein on the 20th day of June 1940 affirmed the judgment in the Superior Court for Hillsborough County, State of New Hampshire. The opinion of the said Supreme Court in the last resort in all causes in the State of New Hampshire has not yet been officially reported but is of record unofficially in State v. Walter Chaplinsky et al., — Atl. (2) —. The order of affirmance by the New Hampshire Supreme Court entered in the office of the Clerk of said Court on June —, [fol. 259] 1940 became a final judgment on that date.

Assignments of Error

Now come the appellants in the above cause and file herewith, together with their petition for appeal, assignments of error and say that there are errors committed by the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, make the following assignments:

First. The New Hampshire Supreme Court committed reversible error in failing to hold that Chapter 145 Public Laws of New Hampshire, Sections 2, 3, 4 and 5, as construed and applied to appellants is void by reason of the fact that it unreasonably and unlawfully deprives appellants of freedom to worship Almighty God, Jehovah, and freedom of conscience, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

Second. The New Hampshire Supreme Court committed reversible error in failing to hold that Chapter 145 Public

Laws of New Hampshire, Sections 2, 3, 4 and 5, as construed and applied to appellants is void by reason of the fact that it unreasonably and unlawfully deprives appellants of freedom of speech, of press and of assembly, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

[fol. 260] Third. The New Hampshire Supreme Court committed reversible error in failing to hold that Chapter 145 Public Laws of New Hampshire, Sections 2, 3, 4 and 5, as construed and applied to appellants is not a valid exercise of police power.

Fourth. The New Hampshire Supreme Court committed reversible error in failing to hold that the aforesaid statute is void on its face inasmuch as it vests in the officer named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which he may or may not grant or refuse a permit and thus denies equal protection of the laws in violation of the United States Constitution, Fourteenth Amendment, Section 1.

Fifth. The New Hampshire Supreme Court committed reversible error in failing to hold that the evidence and fact findings of the trial court did not show appellants to be guilty of a violation of Chapter 145 Public Laws of New Hampshire, Sections 2, 3, 4 and 5, because the undisputed evidence shows that it was not a "parade" but an information march.

Sixth. The New Hamphire Supreme Court committed reversible error in failing to hold that the aforementioned statute is void on its face in that it is vague and indefinite and therefore denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, [fol. 261] Section 1.

Seventh. The New Hampshire Supreme Court committed reversible error in failing to hold that the trial court erred in overruling and refusing defendants-appellants' offer of proof of the Scriptural reasons as to why they engaged in the work of publicly declaring that "religion is a snare and a racket." This evidence appears in the offer in the Record (page 166).

Prayer for Reversal

For and on account of the above errors the appellants, Willis Cox, Walter Chaplinsky, John Konides, Arvid E.

Moody, and Ovila Paquette, pray that the said judgment of the New Hampshire Supreme Court hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellants, and for their costs.

Joseph F. Rutherford, Hayden Covington, Attorneys for Appellants.

[fol. 262] [File endorsement omitted]

[fol. 263] UNITED STATES SUPREME COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 3, 1940

Appellants in the above entitled suit and cause and each of them have prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the New Hampshire Supreme Court on the 20th day of June 1940.

It appearing that the appellants in their Assignments of Error and Brief filed originally in this cause before hearing attacked the statute in question on the grounds, as contended by them, that it unreasonably deprives them of [fol. 264] their freedom to worship Almighty God, freedom of conscience, of speech, of press, and of assembly, and that it is void because discriminatory, vague and indefinite; all of which contentions were overruled by judgment of the New Hampshire Supreme Court previously rendered herein.

And it appearing that appellants have presented and filed their petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within ninety (90) days from date of said judgment of the New Hampshire Supreme Court, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the New Hampshire Supreme Court in the above entitled cause as provided by law, and

It is further ordered that the Clerk of the New Hampshire Supreme Court shall prepare and certify a transcript of the record, proceedings and judgment in the above cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty (30) days from date.

And it is further ordered that security for costs on appeal [fol. 265] be fixed in the sum of two hundred ($200 00/100) Dollars.

Dated, September 5, 1940.

John E. Allen, Chief Justice of the New Hampshire Supreme Court.

[fols. 266-267] Bond on appeal for $200.00 omitted in printing.

[fols. 268-271] Citation, in usual form, filed Sept. 3, 1940, omitted in printing.

[fol. 272] UNITED STATES SUPREME COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

Whereas appeals were jointly taken by appellants from convictions under the information;

Whereas on the 20th day of June, 1940, the New Hampshire Supreme Court affirmed the convictions as to all appellants as shown by certificate of the Clerk of said court, a copy of which certificate appears as Appendix A hereof.;

Whereas appellants have filed petition for appeal to the Supreme Court of the United States, assignments of error and prayer for reversal and jurisdictional statement with the Clerk of the New Hampshire Supreme Court within ninety (90) days from June 20, 1940, the date of entry of aforesaid judgment affirming the convictions, and the Chief Justice of said New Hampshire Supreme Court having signed an order granting said appeal; and within five (5) [fol. 273] days after said allowance of appeal copies of the petition for appeal, order allowing appeal, assignments of error, jurisdictional statement, statement of points to be relied upon and statement directing attention of counsel for

appellee-respondent to provisions of paragraph 3 of Rule 12 of the Supreme Court of the United States, together with copy of citation, having been duly served upon appellee-respondent's counsel;

Whereas appellants having filed a bond to cover costs of appeal to the Supreme Court of the United States in the amount of Two Hundred ($200.00) Dollars, and it is agreed that such bond shall continue in effect pending final action herein by the United States Supreme Court;

It Is Agreed between the parties that as the parts of the record to be sent by the Clerk of the New Hampshire Supreme Court to the Clerk of the Supreme Court of the United States to be filed and printed by the Clerk of the United States Supreme Court, the following shall be and are provided, to wit:

1) Record printed and now on file with the New Hampshire Supreme Court.

2) Docket entry of judgment of New Hampshire Supreme Court rendered on June 2[illegible], 1940.

3) Opinion of the New Hampshire Supreme Court.

4) Judgment.

[fol. 274] 5) Petition for appeal to the Supreme Court of the United States.

6) Order allowing appeal.

7) Assignments of error.

8) Prayer for reversal.

9) Statement as to jurisdiction.

10) Statements of points to be relied upon.

11) This stipulation.

12) All exhibits.

Signed on this fifth day of September, 1940:

Joseph F. Rutherford, Hayden Covington, Attorneys for Appellants. Thomas P. Cheney, Attorney General of N. H. Frank R. Kenison, Assistant Attorney General. J. Vincent Broderick, County Solicitor, Attorneys for Appellee.

Appendix "A"

The State of New Hampshire. Supreme Court. 1940 Term

3166

State

v.

Cox & a.

In the above entitled matter, the court upon the 20th of June, 1940, made the following order: "*Exceptions overruled.*"

[fols. 275-276] Rule 10 of the court provides as follows:

"Motions for re-hearing will not be entertained unless made in writing, briefly stating the points upon which a re-hearing is desired, and filed with the clerk within ten days after he notifies the parties of the order in the case, as required by law."

All parties were notified in compliance with such rule upon the 20th of June, 1940.

Upon July 3, 1940, at the request of the defendant, the time in which to file a motion for re-hearing was extended until July 13, 1940.

No motion for re-hearing has ever been filed in this matter to date.

Attest: (Signed) George O. Shovan, Clerk of N. H. Supreme Court.

[fol. 277] United States Supreme Court

Statement of Points to be Relied Upon—Filed October 14, 1940

Come now appellants in the above-entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point 1. The Statute of the State of New Hampshire, to wit, Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, as construed and applied to appellants is unconstitutional and void in that it un-

reasonably and unlawfully deprives appellants of freedom to worship Almighty God, Jehovah, and freedom of conscience, of speech, of press, and of assembly, all in contravention of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Point 2. The statute aforementioned is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment to the Federal Constitution in that as construed and applied [fol. 278] it deprives appellants of liberty without due process of law.

Point 3. The statute aforementioned as construed and applied to appellants is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment to the Federal Constitution in that it denies the appellants the equal protection of the laws.

Point 4. The statute aforementioned is void on its face inasmuch as it vests in the officer therein named unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which he may or may not grant or refuse a permit, and it thus denies the equal protection of the laws in violation of the United States Constitution, Fourteenth Amendment, Section 1.

Point 5. The New Hampshire Supreme Court erred in ruling that the aforementioned statute as construed and applied to appellants is a constitutional and valid exercise of police power.

Point 6. The New Hampshire Supreme Court erred in ruling that the evidence and fact findings of the trial court showed appellants to be guilty of a violation of the aforementioned statute, because the undisputed evidence shows that it was not a "parade" but an information march.

Point 7. The aforementioned statute is void on its face in that it is vague and indefinite and therefore denies equal protection of the laws, contrary to the United States Con- [fol. 279] stitution, Fourteenth Amendment, Section 1.

Point 8. The New Hampshire Supreme Court erred in ruling that the trial court rightly overruled and refused defendants-appellants' offer of proof of the Scriptural reasons as to why they engaged in the work of publicly declar-

ing that "religion is a snare and a racket". This evidence appears in the offer in the Record (page 166).

Joseph F. Rutherford, Hayden Covington, Attorneys for Appellants.

[fol. 279a] [File endorsement omitted.]

[fol. 280] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed November 14, 1940

To the Clerk of the United States Supreme Court:

In compliance with the rules and your letter of October 24, 1940, the following designation of parts of the record to be printed is made, to wit:

1) Respondents' Bill of Exceptions, pages 1 to 167 inclusive.
2) Docket entry of judgment of New Hampshire Supreme Court rendered on June 20, 1940.
3) Opinion of the New Hampshire Supreme Court.
4) Judgment.
5) Petition for appeal to the Supreme Court of the United States.
6) Order allowing appeal.
7) Assignments of error.
8) Prayer for reversal.
9) Statement of points to be relied upon.
10) Stipulation of counsel.
11) All exhibits.
12) Order noting probable jurisdiction on appeal.

Dated, Brooklyn, New York, November 12, 1940.

Joseph F. Rutherford, Hayden Covington, Attorneys for Appellants.

[fol. 281] [File endorsement omitted.]

Endorsed on cover: File No. 44,851. New Hampshire Supreme Court, Term No. 502. Willis Cox, Walter Chaplinsky, John Konides, et al., Appellants, vs. State of New Hampshire. Filed October 14, 1940. Term No. 502 O. T. 1940.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ET AL.,

Appellants,

vs.

STATE OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

STATEMENT AS TO JURISDICTION.

JOSEPH F. RUTHERFORD,
HAYDEN COVINGTON,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ARVID E. MOODY, AND OVILA PAQUETTE,

Appellants,

vs.

STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

JURISDICTIONAL STATEMENT.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

New Hampshire Statute Drawn in Question.

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, and which statute reads as follows:

Chapter 145 Public Laws of New Hampshire:

SECTION 2: THEATRICALS: PARADES: MEETINGS.

No theatrical or dramatic presentation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

SECTION 3: LICENSING BOARD.

Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

SECTION 4: LICENSES: FEES.

Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

SECTION 5: PENALTY.

> If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter.

The New Hampshire Supreme Court and the courts below held that the statute was not unconstitutional and that it did not abridge appellants' freedom to worship ALMIGHTY GOD, freedom of speech, of press, and of assembly, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the statute's application to appellants' acts and decided in favor of validity of the statute and held it to be constitutional as applied to appellants.

Timeliness.

The judgment of the New Hampshire Supreme Court was entered on June 20, 1940 (R. 254). The opinion of that court was delivered on the same date and appears in the Record, p. 236 *et seq.* The judgment of the New Hampshire Supreme Court became final on June 20, 1940, the date of the opinion. The petition for appeal is duly filed and presented within ninety (90) days from such date to this Court and is therefore timely.

Statement of Nature of Case.

Appellants, Willis Cox, Walter Chaplinsky, John Konides, Arvid E. Moody, and Cyrila Paquette, and 63 other persons were arrested on the evening of July 8, 1939 by the police of Manchester, New Hampshire, for an alleged violation of the aforementioned statute.

Each of such sixty-eight persons was prosecuted by warrant and complaint, tried, convicted and fined by the Municipal Court of Manchester. Each duly appealed to the

Superior Court of Hillsborough County to later have a trial *de novo.*

Upon appeal to the Superior Court it was agreed that the five appellants herein would be tried and that the remaining 63 defendants would abide by whatever final decision would be made as to the five named appellants herein.

On November 20, 1939, the cases involving the five appellants named herein were tried to a jury before Oscar L. Young, Presiding Justice of the Superior Court, which resulted in their being found guilty by the jury on November 22, 1939. Thereafter, in due time, the same sentence was imposed against the five appellants named herein and each of the other 63 defendants by Judge Young as was imposed against each by the Manchester Municipal Court.

Each of the 68 defendants has posted bond in required amount to suspend execution of the judgment until final disposition is made of these cases on appeal.

The facts as established by the evidence are these:

All sixty-eight defendants and four other persons met at Odd Fellows Hall, located at 83 Hanover Street in the City of Manchester, New Hampshire, on the evening of July 8, 1939, for the purpose of engaging in an information march. This group of 88 persons divided into four or five sections of about 15 to 20 persons to each section. Each section then proceeded to a different part of the business district of the city. After reaching their respective territories, each group would line up in single-file formation and then proceed to march along the sidewalk, "single-file," that is, following one another.

While thus marching in single file along the said sidewalks each of the defendants carried a small staff held upright with a sign fastened thereto, reading:

RELIGION IS A SNARE AND A RACKET.

and on the reverse side of said sign it read:

SERVE GOD AND CHRIST THE KING.

Some of the marchers carried placards secured to their chests and bodies, before and behind, bearing the statement:

FASCISM OR FREEDOM.
HEAR JUDGE RUTHERFORD
AND FACE THE FACTS.

While thus marching they handed out printed leaflets announcing a meeting at a later time to be held in the Odd Fellows Hall in Manchester, where the talk on government entitled "Fascism or Freedom" would be given to the public free of charge.

The trial court below found, and the undisputed evidence showed, that Jehovah's Witnesses, including appellants named herein, did not apply for a permit and none was issued for such "information march".

There was no evidence and no finding that the traffic, automobile or other vehicular or pedestrian, was blocked or that the sidewalk was blocked. However, a police officer gave his opinion that the traffic was interfered with.

There was a dispute in the evidence as to the distance between the marchers. The prosecution contended that the marchers were about three feet apart, while the defendants all testified that they were from 15 to 20 feet apart, as per their instructions. Photographs, Appellants' Exhibits A to H inclusive, refute the State's evidence and corroborate the defendants' evidence on this point. However, this dispute is not material to any of the issues in this case and will not be discussed further.

The undisputed evidence showed that each of the defendants is an ordained minister of Almighty God to preach the

gospel of His Kingdom and to declare publicly in the streets and otherwise the judgments of JEHOVAH GOD written in His Word, the Bible, and in obedience to the command of the Most High God publicly proclaiming that this is the day of God's vengeance when His righteous judgments shall be speedily executed by His King Christ Jesus accompanied by the invisible hosts of heaven who will utterly throw down and destroy all deceptive, fraudulent and hypocritical institutions of earth to clear the way for the continuing increase and expansion of THE THEOCRACY, Jehovah's everlasting Government under Christ Jesus, which Government alone shall hold sway perpetually throughout the entire earth; and that all upright persons who obey its perfect laws shall joyfully hail only that righteous government and thus live and never die. That they were each engaging in said information marches as such ministers, and that their participation therein was one of their ways of worship and service to Almighty God. This was not disputed (R. 5-162).

Before any evidence was offered by either side, and before the case was opened, the appellants filed a motion to dismiss the complaints because of unconstitutionality (R. 3). At conclusion of the State's case, appellants filed another motion to dismiss the complaint and discharge appellants upon grounds therein stated (R. 71). On November 20, 1939, appellants filed a motion to dismiss (R. 164), and on November 21, 1939, filed a motion to dismiss (R. 166), and on November 22, 1939, filed another motion to dismiss. Each of said motions was overruled by the court and exception allowed to appellants. As grounds for such motions the appellants contended that the statute as construed and applied to them was invalid and void because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that as so construed and applied it unlawfully deprives appellants of their rights of freedom to worship Almighty God according to God-

given commands recorded in Holy Writ and according to the dictates of their conscience; also, of freedom of speech and of press and of assembly. As further ground appellants contended in the motion that the statute is void on its face because of vagueness, indefiniteness and the delegating of arbitrary discretion and discriminatory powers to the licensing authority. It was further contended in the motions that the evidence failed to show appellants guilty.

Bill of exceptions covering all the points here urged was duly allowed by the trial judge, and the case was taken to the New Hampshire Supreme Court on such bill of exceptions (R. 1-3). The case was timely appealed to that court and duly docketed; and was thereafter argued at the May Term, 1940, and submitted on brief.

In the above matter *substantial Federal questions* attacking the validity of the statute were raised in the trial court by motions to dismiss at various stages of the proceedings set forth above, on the ground that as construed and applied to appellants, and on its face, the statute is invalid because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that it unreasonably deprives appellants of freedom to worship Almighty God, freedom of speech, of press, and of assembly. And, further, that such statute vests in the licensing authority arbitrary and discriminatory powers and fails to prescribe conditions upon which a permit may be granted or refused, and is vague and indefinite; thereby denying equal protection of the laws in violation of the Federal Constitution, Fourteenth Amendment, Section 1 (R. 1-3).

These points of law were overruled by the trial court, although duly and timely urged (R. 3).

These Federal questions were carried forward and urged in the assignments of error, which were presented to the

New Hampshire Supreme Court in the time and manner required by law (R. —).

The New Hampshire Supreme Court passed upon each of said Federal questions or assignments, attacking the validity of the statute as applied to appellants, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. See Opinion, Appendix A.

The State Supreme Court sustained the conviction of each appellant and affirmed the judgment of the trial court assessing a fine and costs as to each appellant and as to each of the remaining sixty-three defendants (R. —).

There was no evidence that the appellants or any of their associate defendants acted boisteriously or in a truculent manner. The undisputed evidence showed that their conduct did not involve a violation of the law of morals, or imperil the safety of the State, or violate property rights, or disturb the public peace. The undisputed evidence shows that appellants were engaged in an act of worship of Almighty God by publicly exposing the danger that the people face by yielding to or continuing in the snare of religion, which makes void the commandments of Almighty God.

In the petition for appeal and the assignments of error filed with this statement, appellants each complain of the judgment of the New Hampshire Supreme Court for and on account of each of the grounds set forth in their brief filed in said State court and which grounds are also set forth in the bill of exceptions duly approved by the trial court.

Grounds and Decisions Showing Substantial Federal Questions.

Appellants' contentions herein are that the statute drawn in question, as applied to their activity, is void in that it

A) deprives them of their right of freedom to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution;

B) deprives appellants of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

C) deprives appellants of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

D) is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1;

E) is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

ARGUMENT.

A.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

"Liberty" of all persons, as expressly protected against curtailment by a state and subdivisions thereof, embraces not only one's right to freedom from physical restraint,

but extends rightly to his free exercise and enjoyment of the right to entertain any opinion and to practice any right principle, which liberty and right even the Congress of the United States is constitutionally estopped from infringing.

Schneider v. *State*, 308 U. S. 147;
Thornhill v. *Alabama*, 309 U. S. 88;
Carlson v. *California*, 309 U. S. 106;
Cantwell v. *Connecticut*, 310 U. S. 296.

The appeal prayed for by appellants should be allowed by this Court and the judgment of the court below reversed and appellants completely discharged because the essential privilege of each appellant to worship Almighty God in accordance with God's written law and with the person's conscientious understanding of the Maker's requirements prescribed in that law, has been most wrongfully and unlawfully denied to appellants through the judgment of conviction by the court below.

In the high councils of this Nation and of its every State Almighty God is formally called upon continually for guidance, such as in the administering of oaths, opening of courts and legislatures, with prayer that the will of Almighty God be done. In fact, it is a fundamental proposition of law that is so firmly settled as not to require the citation of any authority that all the courts of this land take *judicial notice of the Bible* and all of its contents from cover to cover. Appellants testified that each is a minister of Jehovah God and the prosecution's witnesses likewise testified that each appellant is one of Jehovah's Witnesses, a minister of the gospel of God's Kingdom.

The renowned Blackstone in his *Commentaries* on the common law has plainly expressed the law to be followed by this Court in this matter. See Blackstone Commentaries, Chase 3d ed., pp. 5-7.

From its beginning this country has been recognized as a "Christian nation"; meaning that its inhabitants try to

follow the lead of Christ Jesus, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each appellant is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For anyone like appellants willingly to disobey the commandments of Almighty God would result in the destruction of such disobedient one, as each appellant sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are: "Thou shalt worship the Lord thy God, and Him only shalt thou serve" (Matthew 4:10). "God is a Spirit; and they that worship Him must worship Him in spirit and in truth."—John 4:24.

According to Black's Law Dictionary, "worship" is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

Following are some of the commandments of Almighty God which every follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the

meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn.''—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

''This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come'' (Matthew 24:14). ''Go ye into all the world, and preach the gospel to every creature.''—Mark 16:15.

''If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from his way, he shall die in his iniquity; but thou hast delivered thy soul.''—Ezekiel 33:8, 9.

Almighty God commands His followers to proclaim publicly His commandments and judgments to the people so that all those of honest heart may hear and have opportunity to learn and to choose the way of escape from disaster and to receive life everlasting under THE THEOCRACY, the Kingdom of Almighty God, now here. God's commandments to every true follower of His Son Jesus Christ emphasize that such follower shall publicly proclaim Almighty God's written judgments and condemnations of religion. Furthermore, Proverbs 1:20, 21 says:

''Wisdom crieth without; she uttereth her voice in the streets; she crieth in the chief place of concourse, in the openings of the gates: in the city she uttereth her words.''

Appellants verily believe that the act of publicly counseling and informing persons that ''Religion is a snare and a racket'' and to ''Serve God and Christ the King'' is directly

and unconditionally commanded by the Almighty God in His law, the Bible. We now make reference to the Scriptures above quoted. In doing thus, appellants did exactly as directed by the Lord Jesus Christ. See Mark 6:6, where it is said, "He went round about the villages, teaching." In the Bible it is recorded that Jesus said of the religionist clergy, which necessarily includes religion, that they were liars, murderers, adulterers and adulteresses and were of the Devil and that their father was Satan. See Matthew 23; John 8:44.

The statement "Religion is a snare and a racket" is a mild term when compared with the plain and burning words of the Lord Jesus concerning religion and religionists when He was on earth. We now refer to the Bible, of which this Court takes judicial notice, and which contains the supreme law, to prove to this Court that "religion is a snare and a racket." The Devil sets snares in which unsuspecting persons are caught. It is written, "The fear of man bringeth a snare; but whoso putteth his trust in the Lord shall be safe" (Proverbs 29:25). It is also written, "Neither shalt thou serve their [religious] gods; for that will be a snare unto thee" (Deuteronomy 7:4-16). See also Judges 2:2, 3; Psalm 106:36. If religion is a snare, then the exhibiting of banners to that effect is a friendly warning to the people of good will.

Adolf Hitler is a Catholic and a practitioner of religion, and his regime for several years has had the support of the Roman Catholic Hierarchy institution. It is well known that Hitler constantly consults the wicked spirits, and certainly Hitler and his religion are not teaching the youth morality, integrity or even common decency. Mussolini of Italy, Franco of Spain and Petain of France are all Roman Catholic totalitarian dictators operating with approval and control of the Roman Catholic Hierarchy of Vatican City.

Religion, as distinguished from the true following in the footsteps of Christ Jesus, has always been the institution of persecution and crime. Jesus Christ was hanged on a tree by religionists, and His true followers today likewise are persecuted and falsely charged by religionists. Early settlers of America fled from Europe to the bleak shores of America and hewed out of the forests the embryo of this nation on account of persecution at the hand of religionists.

Religion is a racket because it is false in that it does not represent God as claimed but does represent the Devil as stated by the Lord Jesus Christ. The religionists, clergy, put fear into the minds of sincere persons and thereby induce them to embrace religion. The clergy, religionists, teach to such people the doctrine of "purgatory" and many other false doctrines. They teach that the dead are in "purgatory" and many there suffer conscious punishment and torment and that by the prayers of priests, who receive money for uttering such prayers, the "punishment of those in purgatory" can be shortened. Such is not only a false doctrine, but a wicked defamation of God's name and Word. Such doctrines make God a party to a lie by claiming that He hears and answers the prayers of men who receive money therefor. Jehovah, the Almighty God, is never a party to granting favors upon a money consideration. This is the most subtle and wicked racket for obtaining the people's money by false representation. There are many other false doctrines taught by religionists, clergy, which injure the people. Therefore, it is absolutely and Scripturally true that "religion is a snare and a racket."

Thus, to appellants, it is true that religion is a snare and a racket and each did exactly as commanded by Jesus, whose faithful apostle Paul said, "Speak the truth though it make all men liars."—Romans 3:4; Ephesians 4:15.

We submit the above as the expressed contention of appellants that it was their duty as followers of Christ Jesus to declare that "religion is a snare and a racket" and that in doing such they were exercising their right of freedom to worship Almighty God.

Supreme.

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is the "fountain of life" (Psalms 36:9). One who would live must obey God's law (John 17:3). "The law of the Lord is perfect, * * * The statutes of the Lord are right * * * the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were hailed before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go." Jesus' apostles positively refused to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ" (Acts 5:40-42). That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully and deliberately obeys today.

Misuse of legislative devices and misapplication of statutes to prohibit or to subjugate to human control the worship of Almighty God can be no better described than in the words expressed by the psalmist at the dictation of Almighty God to the effect that such is "framing mischief by law."—Psalm 94:20.

B.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The admitted facts and undisputed evidence show that appellants on the occasion in question were engaged in an activity of "the press." Even the information on its face and the State's evidence show this fact. The act of distributing printed leaflets and carrying signs advertising a public meeting on a subject of government and displaying a banner with the words "Religion is a snare and a racket" constitute *press activity*. It is a way of conveying information to others. The acts of moving about upon the streets, offering printed literature on Bible questions to the people, distributing literature to pedestrians, and simultaneously exhibiting in the sight of pedestrians signs bearing truthful informative slogans, are "press activities."

Here is presented a question of utmost gravity and importance. It goes to the very core of the foundation of the United States Government, the Constitution. This is an unalienable right of the appellants and of every inhabitant of the United States of America to acquire information and to impart it orally, in recorded form, and otherwise, to others. This related to an important subject and affected the rights and the eternal welfare of all persons and was a subject of interest to the appellants as well as to all other right-thinking and sober-minded persons.

The statute here in question, as applied to appellants, is not a valid exercise of the police power. By convicting appellants and holding contrariwise, the courts below have stumbled in the attempt to perform "the delicate and diffi-

cult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation'' (by means of said statute) of appellants' right of ''freedom of the press'' secured by the Fourteenth Amendment to the Federal Constitution. As construed and applied to appellants said statute and the conviction thereunder are in direct violation of said constitutional provision.

Cantwell v. *Connecticut,* 310 U. S. 296;
Schneider v. *New Jersey,* 308 U. S. 147;
Hague v. *C. I. O. et al.,* 307 U. S. 496;
Lovell v. *City of Griffin,* 303 U. S. 444.

Solely because the substance of the printed information distributed or displayed by means of banners carried by appellants is novel to some, offensive to others, or even shocks the religious susceptibilities of any, is not a sufficient or substantial ground for invoking the police power to deprive appellants of this right of freedom of the press or the right of freedom of speech. None of the justifications for denial of these rights exist in the present case. See *Near* v. *Minnesota,* 283 U. S. 697, 707.

C.

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The right of persons to assemble on the streets and sidewalks is an inherent right of the people. It is also their ''imprescriptible right'' to use the sidewalks to disseminate information, orally or in printed or otherwise recorded form, and to call important questions to the attention of the public. In fact, this is the best place.

In recent cases involving the right to picket on the streets, this court, speaking through Mr. Justice Murphy, emphasized the points of the preceding paragraph.

Thornhill v. *Alabama,* 309 U. S. 88;
Carlson v. *California,* 309 U. S. 106.

In the case of *Schneider* v. *New Jersey, supra,* Mr. Justice Roberts, speaking for this court, said that the streets are the natural and proper place for dissemination of information and opinion, and that they have been used for this purpose from time immemorial, and also announced the rule that this fundamental personal right cannot be denied or abridged on the ground that the conveniences of the public will be interfered with.

Furthermore, in the celebrated case of *Hague* v. *C. I. O. et al., supra,* on the question of freedom of assembly and use of the streets this court said:

> "In the *Slaughter-House Cases* it was said. 16 Wall. 79: 'The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus,* are rights of the citizen guaranteed by the Federal Constitution. * * *
>
> "*Second.* What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of streets, and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.
>
> "'* * * Wherever the title of streets and parks may rest, they have immemorially been held in trust

for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all. * * *

"It is enough that petitioners have prevented respondents from holding meetings and disseminating information, whether for the organization of labor unions or *for any other lawful purpose.*" [Italics supplied.]

From this it is apparent that the court below stumbled in its attempt to perform the delicate and difficult task of appraising the substantiality of the reasons advanced by the State as grounds for denying appellants their constitutional right. We emphasize the fact that this was a march or "assembly" for the purpose of dissemination of information on a subject of extraordinary importance and public interest, "Fascism or Freedom," and was not, therefore, one of the "other personal activities". True, the nature of this "mobile assembly" *way* of communicating information is by some regarded as unusual. Appellants' use of that *way* was, nevertheless, a beneficial and lawful exercise by them of rights safeguarded for every inhabitant of the United States of America by its Constitution.

D.

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

This is argued along with and under point E hereof, because both points are so closely interwoven that time and space can be conserved in the interest of the court and others to so present these two points. Reference is therefore made here to the argument under point E, *infra.*

E.

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

The said statute, Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, prohibiting parades and processions without a license, appears word for word at page 2, *supra.*

Appellants assert that said statute violates the "due process" clause of the Fourteenth Amendment because it fails to establish an adequate standard to govern the official action of the State or municipality, and is so vague that it fails to inform those who are subject to it what conduct will render them liable to its penalities.

This position is based largely upon the decision of this Court in the case of *Hague* v. *C. I. O. et al., supra,* wherein it was held that a street-meeting ordinance of Jersey City, New Jersey, which was invoked by municipal authorities to

forbid union members from holding meetings in streets and parks, is "void upon its face". The Jersey City ordinance provided as follows:

> "THE BOARD OF COMMISSIONERS OF JERSEY CITY DO ORDAIN:
>
> "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.
>
> "2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.
>
> "3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.
>
> "4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

The foregoing Jersey City ordinance this Court declared void, in the following language:

> "We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. * * * It does not make comfort or convenience in the use of streets or parks the standard of official action. It en-

> ables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."

The New Hampshire statute here drawn in question is likewise subject to the criticism that its standard is too vague. It does not declare that a permit is required for all street parades, processions and assemblages. The legal rights of citizens on sidewalks are certainly not quickly and easily definable. It is presumably the purpose of this statute to define a part of those rights. This argument is not intended to raise fanciful and strained objections. Testimony in this case showed that the information march was deliberately arranged with this statute in view. That is, the persons in the procession were instructed to walk on the sidewalk in single file, at least twenty feet apart. In such array they would be ordinary pedestrians, causing no more interference with others than any orderly pedestrian. It is true that there was conflict in the testimony as to whether or not there was any interference with pedestrians, but that conflict in the testimony serves undeniably to emphasize *the issue* here involved, for it demonstrates that no standard is defined as to what constitutes interference. The result is that the officers have uncontrolled discretion in determining whether or not a given procession falls within the limits of this ordinance. Under the *Hague* case such uncontrolled discretion is held to be an unconstitutional grant of power.

This Court has frequently considered the constitutionality of statutes and ordinances couched in language as vague

as the language of the statute here challenged. For example, a statute of Oklahoma made it criminal for contractors doing state work to pay workmen less than the "current rate of per diem wages in the locality where the work is performed". In *Connelly* v. *General Construction Co.*, 269 U. S. 385, this was held to violate the due process clause of the Fourteenth Amendment.

The New Hampshire statute here involved is subject to the same criticism, for the standard established therein is likewise "composed of a multitude of gradations". A given procession which might interfere with pedestrians at noon or at 6 P. M. might find a clear sidewalk at 10 A. M. or at 3 P. M. A large number of possible situations may be imagined. It is certainly not an exaggeration to say, in the language of the court, "that men of common intelligence must necessarily guess at its meaning and differ as to its application." For example, would a picket line in which the individuals were walking single file ten feet apart, moving up and down the sidewalk, constitute a parade or procession? Suppose the individuals in the picket line were walking two abreast, each couple ten feet from the other? Without discussing the matter any further, it would seem that such picketing should not require a permit.

The decision of this Court in the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying equal protection of the laws, within the Fourteenth Amendment to the Federal Constitution. This Court quoted with approval (at pages 372 *et seq.*) the following from a Maryland case:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented * * *; and when we remember that this action

or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

When considering the New Hampshire statute here challenged the important thing to be borne in mind is the fact that nowhere therein does it grant the public the right to have an assembly or march or procession which is an assembly within the meaning of the Constitution. The statute says that there shall be no such parade or procession unless by license. By its terms the statute gives the licensing authority the privilege to so route and regulate the parade or "mobile assembly" as to completely amputate the right to have such.

Conclusion.

For sake of brevity, reference is here made to PETITION FOR APPEAL filed in this cause and we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that *substantial federal questions* were presented before the New Hampshire Supreme Court.

WHEREFORE the Supreme Court of the United States ought properly to note jurisdiction of this cause for final hearing in accordance with rules of this Court.

Respectfully submitted,

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Attorneys for Appellants.

APPENDIX A.

June 20, 1940.

3166, Hillsborough.

STATE *v.* WILLIS COX.

SAME *v.* WALTER CHAPLINSKY.

SAME *v.* JOHN KONIDES.

SAME *v.* ARVID E. MOODY.

SAME v. OVILA PAQUETTE.

COMPLAINTS, for taking part in a parade or procession on public streets in the City of Manchester without license therefor as required by Statute (P. L., *c.* 145, *s.* 2), the violation of which is made a misdemeanor (*Ib.*, s. 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's Witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an "information march". They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and "as close together as it was possible for them to get without interfering with each other's walking" marched on the sidewalks of certain streets, some carrying placards or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

Manchester had a population of over 75,000 in 1930, and there was testimony that on Saturday nights in an hour's time 26,000 persons passed one of the intersections where

the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required.

Their bill of exceptions was allowed. It presents as legal issues the construction of the statute and its validity under the State and Federal Constitutions.

Transferred by *Young*, J.

Thomas P. Cheney, Attorney-General, *Frank R. Kenison*, Assistant Attorney-General, and *J. Vincent Broderick*, County Solicitor, (*Mr. Kenison* orally) for the State.

Charles D. Barnard, Charles H. Barnard, Joseph F. Rutherford (of New York) and *Hayden Covington* (of New York) (*Mr. Covington* orally), for the defendants.

ALLEN, C. J. The statute (P. L., *c.* 145, *s.* 2) upon which the defendants were found guilty is this: "No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for."

A succeeding section (3) provides that a city may create a licensing board to be appointed by the city government, to "have delegated powers to investigate and decide the question of granting licenses" and to "grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers." Another section (4) requires all special licenses to be in writing and "to specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting," and establishes a range of fees from a nominal amount to $300. The section ensuing (5) prescribes the penalty for violation of the statute.

The contention that the defendants were not guilty under the terms of the statute has no merit. As the complaints

charged, they "participated in a certain parade or procession". A succession of persons substantial in number walked in formal march with signs and placards. This was a parade or procession such as is required by the statute to be licensed. It was a march in formation, and its advertising and informatory purpose did not make it otherwise. Its single-file order did not destroy its character as a procession, nor did its purpose to publish information take it out of the purview of the statute. Each group was an organized unit under leadership and direction. It is immaterial that its tactics were few and simple. It is enough that it proceeded in ordered and close file as a collective body of persons on the city streets. Whether it could be called an assembly, being in motion rather than stationary, is also immaterial. If it might be, it remained a parade or procession as the statute employs the words. Clearly, the defendants took part in a parade or procession without a license therefor.

The issue whether the act which the defendants violated is void under the State Constitution may be readily and briefly stated. The State bill of rights (Constn., Pt. I, Art. 22) has this provision: "The *liberty of the press* is essential to the security of freedom in a state: It ought, therefore to be inviolably preserved". The right to worship God in any manner is also held to be inalienable, provided the public peace, or others in their religious worship, are not disturbed. (Ib., Pt. I, Art. 5). Whether these articles serve to render the act a nullity, or at least inapplicable to the facts of the case, is to be determined. Decision turns upon the force and effect of another article of the bill of rights (31) reading as follows: "The legislature shall assemble for the redress of public grievances, and for making such laws as the public good may require". Another provision of the Constitution (Constn., Pt. II, Art. 5) confirms the grant of power to the legislature by vesting it with "full power and authority * * * to ordain * * * all manner of wholesome and reasonable * * * laws * * * directions and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this Constitution, as they may judge for the benefit and welfare of this State, and for the governing and ordering thereof, and of the

subjects of the same, * * *". The defendants contend that the legislature has overstepped itself in enacting the law as an exercise of the protective power.

While highways are public, they are subject to public control. The public have no vested rights to their use, and it follows that the use is such as the State permits, and that any conditions of permission are proper, provided they are not forbidden by the Constitution.

"* * * the operation of an automobile upon the public highways is not a right but only a privilege (*Comm.* v. *Kingsbury,* 199 Mass. 542); and that which the State may withhold, it may grant upon condition." *State* v. *Sterrin,* 75 N. H. 220, 222, cited in *Opinion of the Justices,* 81 N. H. 566, 567, 568. "Classification between those who may and who may not have the privilege of highway use of motor vehicles must be reasonable, but the privilege itself need not be:" *Rosenblum* v. *Griffin,* 89 N. H. 314, 319.

The use is for travel, and the travel includes its incidents. The highway "easement is bought by the public when it is reasonably necessary for the public accommodation. The right, when bought, is a right of reasonably using the land as a way." *Varney* v. *Manchester,* 58 N. H. 430, 432. "Travelers upon public highways have a right to do all acts incident to 'a viatic use of the way.'" *Lydston* v. *Company,* 75 N. H. 23.

While travel may be with any end in view, a highway itself may be used only for the travel. The State may provide measures to prevent its use for other purposes, and to secure its use for travel only. It may regulate travel, and, since the right to travel is a privilege, may forbid any particular form of travel, or may permit it under such terms as it may impose, with constitutional bounds. The State is in the position of a landowner in control of the use of a highway, except that discrimination must be fair and that no essential rights be impaired. At its will it may shut off a highway from use and it may limit the travel uses to certain forms of use. "The State has authority to make regulations as to the time, mode and circumstances under which parties shall assert, enjoy, or exercise their rights (of highway use) without coming in

conflict with any of those constitutional principles which are established for the protection of private rights and property." *State* v. *White*, 64 N. H. 48, 50, in which case a statute forbidding drum beating in the compact part of a town was held valid and applicable to the defendants who beat a drum "in accordance with their sense of religious duty, and in worshipping God according to the dictates of their own consciences," and without "disturbing the public peace or the religious worship of others." "A reasonable measure of prevention to avoid disturbance is not an infringement of constitutional rights." *Ib.* 50. The permission of highway use must not be upon a condition restricting or abridging freedom of speech or writing, but impositions of conditions respecting the freedom are valid if they reasonably serve to prevent any substantial disturbance which is an interference of normal travel.

Undoubtedly the right to travel imparts the right of communciation from one while a traveler to others, and travel may be by persons congregated in a group; but while the reasonable incidents of travel are a part of it, the incidents do not themselves create or imply the right to travel as flowing from them. The right of speech is an incident of the right of highway travel, but the right of highway travel is not inherent in the right of speech.

In analysis of the statute under consideration, the normal and well established rules of construction with reference to constitutional validity are to be employed. It is assumed that the legislature intended to enact no invalid laws. It follows that when a law is capable of two constructions, one giving, and the other not giving, constitutional effect to it, the construction favoring validity is adopted. It is only when the language and terms of the act do not reasonably permit such a construction that the act is held unconstitutional. "When a statute is fairly susceptible of two interpretations, one rendering it constitutional and one not, that construction will ordinarily be adopted which will uphold its constitutionality. The presumption is that the legislature intended to keep within the limits of both the Federal and State Constitution,

and to restrict the operation of its enactments to cases where they will have effect consistently therewith." *Haselton* v. *Stage Lines*, 82 N. H. 327, 329. "* * * when a statute unsustainable in its literal terms is valid in some of its applications but not in others, it is to be read as though the latter were excepted from its operation." *Woolf* v. *Fuller*, 87 N. H. 64, 69, and cases cited. "When a statute may constitutionally operate in certain cases, but cannot in others which it in terms embraces, it will be upheld, unless evidently intended to conflict with the constitution, and construed not to apply to the latter class of cases, which 'are as fully and effectually excepted by necessary implication, as if the statute had contained an express proviso that it should not extend or apply to such cases.' *Opinion of the Justices*, 41 N. H. 555; *Kennett's Petition*, 24 N. H. 141." *Cheshire &c. Co.* v. *State*, 63 N. H. 167, 169.

While "words, provisions or modifications" may not at all events be read into a law to the end that it may be clothed with constitutional validity *(State* v. *Gerry*, 68 N. H. 495, 503), yet when the language used fairly admits of a construction which endows the law with validity, that construction will be adopted in preference to an opposing construction. Not to read in what the language implies is to amend or repeal. And judicial disregard of the express meaning is equally, if not more, serious as an attempt to legislate. Certainly a stated bestowal of "delegated power" is one of subsisting power, only, with no attempt to add thereto or to substitute therefor a power not delegable because not possessed. A grant expressed to be of only what may be granted cannot purport in addition or substitution, a grant beyond power to grant.

In application of these well settled principles of construction to the case here, if the clause of the act requiring a license for all open-air public meetings upon land contiguous to a highway is invalid, the invalidity is isolated and ineffective to nullify the act in respect to its requirements in other situations designated by it.

Also, the act is implicit in its requirement that the licensing authority act reasonably in granting or denying licenses, and with reference to the object of public order

on the public ways. If it does not in express terms "make comfort or convenience in the use of the streets * * * the standard of official action" (*Hague* v. *Committee &c.* 307 U. S. 496, 516), the necessary inference is that it does, based upon the presumption in favor of the validity of legislation as reenforced by the express provision of the act bestowing "delegated powers" upon the authority, as a grant intended to be only of due legislative power which may properly be delegated. The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has, and the legislature attempted to delegate no power it did not possess.

The delegation of power is sustainable as one in connection with municipal government. That the licensing authority may be the local tribunal to administer the act and, as incidental to the administration, prescribe such rules and regulations for its due enforcement as it might think proper to adopt, rather than the governing councils of the city, is immaterial. The legislature's control over municipal corporations in such respect is undoubted. *Amyot* v. *Caron*, 88 N. H. 394.

The regulation in respect to license fees is not unreasonable. The range is from $300. to a nominal amount. The act is construed to require a reasonable fixing of the amount of the fee. The charge for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted. The fee is not a revenue tax, but one to meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed.

Application for a permit gives the public authorities notice in advance of any parade or procession for which license may be granted, thus giving opportunity for its proper policing. And the license, in fixing the time and place of a parade or procession, serves to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder.

After all, the difference between a circus parade and the defendants' marching would seem to be only of degree, in respect to free speech and writing. The circus parade advertises its show to follow, with barkers using loud-speakers to announce the features of the show. The "information march" of the defendants was less colorful, but the essential purpose of gaining hearers or readers was the same. The difference between the objective of material profit and the exercise of religious freedom is of constitutional consequence, but the difference is observed in the requirements of the terms of the act which are necessarily implied.

In considering the case in the light of these views, it is to be borne in mind that no claim is made of any non-compliance with the act by any governmental agency. The defendants admit its non-observance by them, but say that they have not committed an offence against the state, since the enforcement of the act would violate the Constitution. Their sole position is that the act is a nullity because it defies the constitutional guaranty of individual freedom in respect to their right to march in the manner they did and for the purpose they had.

It is held that the act is a due exercise of the police power under the state constitution. The state's control over its highways entitles it to regulate their use for travel. Special uses for whatever purposes may be permitted upon such reasonable restrictions as may be prescribed and as are not unfairly discriminatory. The privilege of highway use for travel is not absolute. Maintenance of order, avoidance of congestion, and adjustment of different kinds of travel, are proper objects of legislative consideration in the regulation of use.

It is thought significant that the act prescribing no measures for controlling or suppressing the publication on

the highways of facts and opinions, either by speech or by writing. Communication by the distribution of literature or by the display of placards and signs is in no respect regulated by it. The regulation, in respect to highways, is only of parades and processions in their generality. Freedom of publication by speech or writing is under no restraint. The act is applicable only to organized formations of persons using the highways. The defendants separately, or collectively in groups not constituting a parade or procession, are under no contemplation of the act. At most, the parade or procession was a dramatization of their enterprise, designed to make it spectacular and thus attract attention. No audience to hear any speakers was sought, since no speaking was planned. It apparently was thought that the literature would be more noticed and impressive by a striking manner of its publication, and the time and place chosen were designed to have a large number of readers encountered. The interference with liberty of speech and writing seems slight. The distribution of pamphlets and folders by the groups traveling in unorganized fashion would have had as large a circulation, and parades and signs carried by members of the groups not in marching formation would have been as conspicuous, as published by them while in parade or procession. In respect to the placards and signs, some only advertised a lecture to be given at a future date. Part of the others were concededly not in good taste. If short of blasphemy, the motto or slogan that religion is a snare and a racket was an offence to compelled readers, whose willingness to read was not consulted. Freedom of speech is not understood to go so far as to require any hearers to listen, or of writing as to force it to be read by those confronted with it. The right to worship is not a right to disturb others in their worship, and the right to free speech and writing is not one to force speech or writing on an unwilling audience or readers. It is not unreasonable to say that the sentiment displayed had a provocative tendency to a disturbance of the peace in view of the manner, place and time of its publication.

The courts must uphold the regulations if they are within the confines of reasonableness. Conceding that a highway use in furtherance of divine worship or to advertise and

publish, by speech or writing, one's thoughts and views may be less reasonably subjected to control than a use for other reasons, it is not considered reasonable to hold that such special uses are subject to no control or that other highway travelers have only subordinate rights to such a special use. The public good for which legislation may be enacted is the good of all, and the State constitution recognizes no favored classes. Freedom to worship God, of speech, and of the press, is not abridged by the act, so far as the State constitution protects that freedom. An ordered freedom is all that the guaranty of individual rights secures. Maintenance of order neither abridges nor denies freedom.

The defendants had a right, under the act, to a license to march when, where and as they did, if after a required investigation it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such conditions or changes in time, place and manner as would avoid disturbance. They made no application for a license, and hence may not say that any right was denied them.

The granting or withholding of licenses is of an administrative character, to depend upon such tests of legislation or administrative regulations conformable to the legislation and in aid of enforcement, as are employed to find if the needs of public convenience are met and satisfied; if the public convenience is not subjected to undue disturbance, the license must issue.

The measure of control fixed by the act is permissible in the public interest without invasion of the individual rights, and as a due exercise of legislative powers granted by the state constitutions, the act is sustained. The result would be no different if the excluded evidence had been received as explanatory of the reasons entertained by the defendants for engaging in the parade or procession and for their disregard of the act. A religious doctrine that divine law should be obeyed rather than man's law when the two conflict may be entitled to statement but not to observance.

The question of the validity of the act under the Federal constitution is more difficult. Recent decisions of the United States Supreme Court (*Lovell* v. *City of Griffin*, 303 U. S. 444; *Hague* v. *Committee &c.*, 307 U. S. 496; *Schneider* v.

State, 308 U. S. 147; *Thornhill* v. *Alabama,* 84 U. S. S. C. Law Ed. 659; *Carlson* v. *California,* 84 U. S. S. C. Law Ed. 668; *Cantwell* v. *Connecticut,* No. 632, Oct. 1939 Term) are of pertinent bearing. In all of them the protective power was held improperly exerted, and the question arises whether the special features of the case here are sufficiently in contrast and distinction from them to require a conclusion of a due exercise of the power. "And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights". *Schneider* v. *State, supra.* "As in other cases when a broad distinction is admitted, it ultimately becomes necessary to draw a line, and the determination of that line in nice cases always seems somewhat technical, but still the line must be drawn". *Ellis* v. *United States,* 206 U. S. 246, 260.

For the State courts the difficulty is enhanced by the uncertainty of the construction which may be placed upon the act by the Federal courts. The local construction by the State court of last resort will receive by them "careful and respectful consideration" (*Coombs* v. *Getz,* 285 U. S. 434, 441) and "Great weight" (*Higginbotham* v. *Baton Rouge,* 306 U. S. 535, 539), if the rule in cases presenting the issue of a violation of the article in the Federal constitution forbidding the impairment of contract obligations is followed in cases dependent for decision upon individual rights protected by that instrument. But the local construction has no compelling authority, and forecast and prediction of the Federal construction seem in some aspects an anomalous employment of the judicial function. However, there is the requirement, as an incident of the requirement to pass upon the Federal question, and the conclusion may be accorded some consideration as authority. The State courts may not assume that their own construction of the local law will not be followed.

Approaching the question from this standpoint, it is thought that there are real and substantial differences existing between the case here and those of recent decision as above cited and relieving the act here under examination from the ban of the Federal constitution, at least as to the

offense charged against the defendants. The language of the statute discloses no purpose to impose a "previous restraint" upon freedom of the press or of speech as in *Lovell* v. *Griffin; Schneider* v. *State; Thornhill* v. *Alabama* and *Carlson* v. *California, supra,* nor to hamper freedom of assembly as in *Hague* v. *Committee, etc., supra.* No censorship of comments on matters of public concern, to which reference is made in the *Thornhill* case, is authorized or threatened and *a fortiori* no censorship of religion is contemplated as in *Cantwell* v. *Connecticut, supra.* Neither is there any basis in the present case for a claim of administrative discrimination against these defendants or the religious group of which they are members by the officers charged with the enforcement of the act, analogous to that which was found to exist in the *Hague* case, *supra.*

In essential aspects the Federal guaranties of freedom of speech, and of the press are the same as those of the state. The rights guaranteed are inviolable and may not be abridged. The Federal cases are thought to point out an emphasis for them under the Federal constitution in some superiority of merit and importance over those other guaranties, with the result of the need of closer scrutiny in any attempt to subject them to the exercise of the protective power. But it is understood that the protective power may be employed for their security and furtherance; and that to promote their function and operation regulation to coordinate them with relations and conditions which they may encounter may be justified. If the regulation is in part or altogether for some other objective of public concern, it is not invalid if freedom of speech or of the press is not thereby abridged. It may provide for a due and orderly manner of enjoyment. A license to permit its enjoyment may not be required as a form of censorship, but a license to permit its enjoyment in fair adjustment with the enjoyment of other relations and conditions is not understood to be under the ban of the Federal constitution. How far the right to freedom of speech spells the right to congregate on the public highways for oral communication does not here seem to require answer. The defendants' conduct was wholly in distributing and displaying matter to be read, and they had no objective of oral address and being heard, and if a parade

or procession is to be regarded as an assembly in motion, the right to conduct or engage in it is "not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order." *Hague v. Committee &c., supra,* 516.

Granting that the Federal guaranty of freedom of speech and writing demands its recognition as an incident of the right of highway use, none of the Federal cases cited deny the right of reasonable regulation of the exercise of the guaranteed right when it is enjoyed by persons while upon the highways. In the *Lovell* case a distribution of writings was attempted to be placed under control in arbitrary discretion, without references to "the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets". *Lovell* v. *Griffin, supra,* 451.

"Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs". *Minersville School District* v. *Gobitis,* U. S. Sup. Ct., No. 690, Oct. 139 Term. It would seem a play of imagination to find in the statute any purpose to restrain the freedom of religion, or its exercise through speech or writing.

It is said in some of the cases that an act or ordinance drawn more narrowly would be a valid exercise of the protective power, without abridging the guaranties in question. It is thought that the act here attacked and as locally construed permits no abridgment of the guaranties. Enforcement of the act according to its requirements as found to be contained in it would leave no play or room for the exercise of a too wide discretion. If in enforcement the requirements were not observed, the action would be arbitrary in the particular case. But enforcement of a law is administrative in character, and improper enforcement is disobedience of the law, which, if it makes conduct invalid, does not invalidate the law. If the act in question stated in express and explicit terms the requirements held to be inherent in it, it is not perceived how it would imperil any rights of speech, writing or worship. The discretion delegated has

no wider range than the legislature itself might exercise, and in the nature of things, as a practical necessity, the grant or denial of a license must rest upon decision arrived at with the employment of some discretion. The requirements of comfortable and convenient public travel in a particular case are not determinable by formula, or, for each case, in advance of presentation of its facts, but by discretionary adjustment within the mandates defining permissible considerations.

It is not thought to be of orderly propriety to assume, by extended analysis, to state the exact and precise limits and lines fixed by the federal cases between regulation and invasion. The circumstances of a particular case are factors bearing on the side of the line it falls. It is thought that the local act as analyzed in application to the state constitution does not conflict with the federal constitution as interpreted by the federal courts.

Holding, as is necessary, in the absence of a federal construction of the act, that it is to have the same construction in connection with the federal constitution as in connection with the state bill of rights, the act is considered valid under the federal as well as under the state constitution.

Exceptions overruled.

All concurred.

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FILE COPY

SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 502

WILLIS COX,
WALTER CHAPLINSKY, et al.,
Appellants

v.

STATE OF NEW HAMPSHIRE
Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPELLANTS' BRIEF

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APPEAL FROM THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

APPELLANTS' BRIEF

Opinions Below

The opinion of the New Hampshire Supreme Court is not yet officially reported, but is unofficially reported in 16 A. (2) 508.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 USC 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 46, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Timeliness

The judgment of the Supreme Court of the State of New Hampshire was rendered and entered on June 20, 1940. (Record, page 252) The opinion of that court was delivered on the same date and appears in the Record at pages 238-251. No motion for reargument was filed. (R. pp. 252, 259) Thereby the judgment of the New Hampshire Supreme Court as rendered and entered June 20, 1940, became final as of such date.

A petition for appeal to the United States Supreme Court was duly and timely filed with the New Hampshire Supreme Court (R. pp. 252-256), which was duly and timely allowed (R. pp. 256-257) and docketed with this Court within ninety days from the date that the judgment of the New Hampshire Supreme Court became final.

This Court has noted probable jurisdiction as to appeal of this case.

The Statute

The statute, the constitutionality and validity of which as construed and applied to appellants is here drawn in question, is Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, and which statute reads,

CHAPTER 145 Public Laws of New Hampshire

Section 2: THEATRICALS: PARADES: MEETINGS.

No theatrical or dramatic presentation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be

obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

Section 3: LICENSING BOARD.

Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

Section 4: LICENSES: FEES.

Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

Section 5: PENALTY.

If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter.

The New Hampshire Supreme Court and the courts below held that the statute was not unconstitutional and that it did not abridge appellants' freedom to worship ALMIGHTY GOD, freedom of speech, of press, and of assembly, in violation of the Fourteenth Amendment to the United States Constitution. Accordingly, that court sustained the

statute's application to appellants' acts and decided in favor of its validity and held it to be constitutional as applied to appellants.

Statement

Appellants, Willis Cox, Walter Chaplinsky, John Konides, Arvid E. Moody, and Ovila Paquette, and 63 other persons were arrested on the evening of July 8, 1939, by the police of the City of Manchester, New Hampshire, for alleged violation of the aforementioned statute. (R. pp. 33-35)

Each of such sixty-eight persons was prosecuted by warrant and complaint, tried, convicted and fined by the Municipal Court of Manchester. (R. p. 234) Each duly appealed to the Superior Court of Hillsborough County to later have a trial de novo. (R. p. 1)

Upon appeal to the Superior Court it was agreed that the five appellants herein would be tried and that the remaining 63 defendants would abide by whatever final decision would be made as to the five named appellants herein. (R. pp. 125, 5)

On November 20, 1939, the cases involving the five appellants named herein were tried to a jury before Oscar L. Young, Presiding Justice of the Superior Court, which resulted in their being found guilty by the jury on November 22, 1939. (R. p. 1) Thereafter, in due time, the same sentence was imposed against the five appellants named herein and each of the other 63 defendants by Judge Young as was imposed against each by the Manchester Municipal Court.

Each of the 68 defendants has posted bond in required amount to suspend execution of the judgment until final disposition is made of these cases on appeal.

The facts as established by the evidence are these:

All sixty-eight defendants and 20 other persons met at Odd Fellows Hall, located at 83 Hanover Street in the City of Manchester, New Hampshire, on the evening of July 8, 1939, for the purpose of engaging in an information march.

This company of 88 persons divided into four or five groups of about 15 to 20 persons to each group. Each group then proceeded to a different part of the business district of the city. After reaching their respective territories, each group would line up in single-file formation and then proceed to march along the sidewalk, "single-file," that is, following one another. (R. pp. 140-152, 156-162, 166-168, 175-180, 182-188, 194-200, 215)

While thus marching in single file along the said sidewalks each of the defendants carried a small staff held upright with a sign fastened thereto, reading:

RELIGION IS A SNARE AND A RACKET

and on the reverse side of said sign it read:

SERVE GOD AND CHRIST THE KING

(Exhibit No. 1, R. p. 238)

Some of the marchers carried placards secured to their chests and bodies, before and behind, bearing the statement:

FASCISM OR FREEDOM
HEAR JUDGE RUTHERFORD
AND FACE THE FACTS

(Exhibit No. 2, R. p. 238)

While thus marching they handed out printed leaflets announcing a meeting at a later time to be held in the Odd Fellows Hall in Manchester, where the talk on government entitled "Fascism or Freedom" would be given to the public free of charge. (Exhibit I, R. p. 238)

The trial court below found, and the undisputed evidence showed, that Jehovah's witnesses, including appellants named herein, did not apply for a permit and none was issued for such "information march". (R. pp. 4-5)

There was no evidence and no finding that the traffic,

automobile or other vehicular or pedestrian, was blocked or that the sidewalk was blocked. However, a police officer gave his opinion that the traffic was interfered with. (R. p. 47)

There was a dispute in the evidence as to the distance between the marchers. The prosecution contended that the marchers were about three feet apart, while the defendants all testified that they were from 15 to 20 feet apart, as per their instructions. Photographs, Appellants' Exhibits A to H inclusive, refute the State's evidence and corroborate the defendants' evidence on this point. However, this dispute is not material to any of the issues in this case and will not be discussed further.

The undisputed evidence showed that each of the defendants is an ordained minister of Almighty God to preach the gospel of His Kingdom and to declare publicly in the streets and otherwise the judgments of JEHOVAH GOD written in His Word, the Bible, and in obedience to the command of the Most High God publicly proclaiming that this is the day of God's vengeance when His righteous judgments shall be speedily executed by His King Christ Jesus accompanied by the invisible hosts of heaven who will utterly throw down and destroy all deceptive, fraudulent and hypocritical institutions of earth to clear the way for the continuing increase and expansion of THE THEOCRACY, Jehovah's everlasting Government under Christ Jesus, which Government alone shall hold sway perpetually throughout the entire earth; and that all upright persons who obey its perfect laws shall joyfully hail only that righteous government and thus live upon earth and never die. That they were each engaging in said information marches as such ministers; that their participation in said march was for the purpose (1) of disseminating information in the public interest and (2) was one of their ways of worship and service of ALMIGHTY GOD, in obedience to His plainly written command set forth in Holy Writ. This was not disputed. (R. pp. 123-227)

Before any evidence was offered by either side, and before the case was opened, the appellants filed a motion to dismiss the complaints because of unconstitutionality of the statute as applied. (R. p. 234). At conclusion of the State's case, appellants filed another motion to dismiss the complaint and discharge appellants upon grounds therein stated. (R. p. 236) On November 20, 1939, appellants filed a motion to dismiss (R. p. 234), and on November 21, 1939, filed a motion to dismiss (R. p. 236), and on November 22, 1939, filed another motion to dismiss (R. p. 237). Each of said motions was overruled by the court and exception allowed to appellants.

Bill of exceptions covering all the points here urged was duly allowed by the trial judge, and the case was taken to the New Hampshire Supreme Court on such bill of exceptions. (R. pp. 1-3) The case was timely appealed to that court and duly docketed; and was thereafter argued at the May Term 1940 and submitted on brief.

The State Supreme Court sustained the conviction of each appellant and affirmed the judgment of the trial court assessing a fine and costs as to each appellant and as to each of the remaining sixty-three defendants. (R. p. 252)

Federal Questions Presented

Substantial federal questions attacking validity of the statute were raised in the trial court, and thereafter properly carried forward to the New Hampshire Supreme Court for determination. In the trial court such questions were raised by motions to dismiss, filed at various stages of the proceedings. (R. pp. 1-3) As grounds for such motions the appellants contended that the statute as construed and applied to them was invalid and void because it is in conflict with the United States Constitution, Fourteenth Amendment, Section 1, in that as so construed and applied it unlawfully deprives appellants of their rights of freedom to

worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and according to dictates of appellants' consciences; also, of freedom of speech and of press and of assembly. As further ground appellants contended in the motion that the statute is void *on its face* because of vagueness, indefiniteness and the delegating of arbitrary discretion and discriminatory power to the licensing authority. It was further contended in the motions that the evidence failed to show appellants guilty. (R. pp. 1-3)

These points of law were carried forward and urged in the assignments of error, which were presented to the New Hampshire Supreme Court in the time and manner required by law. (Respondents' Brief, Fol. 169 omitted in printing, R. p. 237.)

The New Hampshire Supreme Court passed upon each of said federal questions or assignments, attacking validity of the statute as applied to appellants, and held the statute valid and constitutional, both on its face and as applied, and found that the Fourteenth Amendment to the United States Constitution was not violated. (R. pp. 238-251)

There was no evidence that the appellants or any of their associate defendants acted boisterously or in a truculent manner. The undisputed evidence showed that their conduct did not involve a violation of the law of morals, or imperil the safety of the state, or violate property rights, or disturb the public peace. The undisputed evidence shows that appellants were engaged in an act of worship of ALMIGHTY GOD by publicly exposing the danger that the people face by yielding to or continuing in the snare of religion, which makes void the commandments of Almighty God.

In the Petition for Appeal and the Assignments of Error and the Statement of Points to be Relied Upon duly filed herein appellants each complain of the judgment of the New Hampshire Supreme Court for and on account of each of the grounds set forth in their brief filed in said State court and which grounds are also set forth in the bill of exceptions duly approved by the trial court.

Specification of Errors to be Urged

Appellants assign the following errors in the record and proceedings in said cause:

The court below committed reversible error in failing to hold that Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of New Hampshire, on its face and as construed and applied to appellants is void by reason of the fact that it

A) deprives them of their right of freedom to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution;

B) deprives appellants of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

C) deprives appellants of their right of freedom of assembly, in violation of the United States Constitution, Fourteenth Amendment, Section 1;

D) is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1;

E) is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Points for Argument

POINT ONE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

POINT TWO

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

POINT THREE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the Federal Constitution's Fourteenth Amendment, Section One.

POINT FOUR

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section One.

POINT FIVE

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the Federal Constitution's Fourteenth Amendment, Section 1.

ARGUMENT

POINT ONE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom to worship Almighty God according to God-given commands recorded in Holy Writ and in accordance with their consciences, all in violation of Section 1, Fourteenth Amendment, United States Constitution.

"Liberty" of all persons, as expressly protected against curtailment by a state, embraces not only one's right to freedom from physical restraint, but extends rightly to his free exercise and enjoyment of the fundamental personal privilege to entertain any opinion and to *practice* any RIGHT principle, which liberty and privilege even the Congress of the United States is constitutionally estopped from infringing, and which liberty and privilege (safeguarded under the Fourteenth Amendment, Section 1) each State is likewise estopped from infringing.

Schneider v. State,
308 U. S. 147

Thornhill v. Alabama,
310 U. S. 88

Carlson v. California,
310 U. S. 106

Lovell v. City of Griffin,
303 U. S. 444

Cantwell v. Connecticut,
310 U. S. 296

The judgment of the court below should be reversed and appellants completely discharged because the essential privilege of each appellant to worship Almighty God in accordance with God's written law and with the person's conscientious understanding of the Maker's requirements prescribed in that law, has been most wrongfully and unlawfully denied to appellants through the judgment of conviction by the court below.

In the high councils of this Nation and of its every State Almighty God is formally called upon continually for guidance, such as in the administering of oaths, opening of courts and legislatures with prayer that the will of Almighty God be done. In fact, it is a fundamental proposition of law that is so firmly settled as not to require the citation of any authority that all the courts of this land take *judicial notice of the Bible* and all of its contents from cover to cover. Appellants testified that each is a minister of Jehovah God and the prosecution's witnesses likewise testified that each appellant is one of Jehovah's witnesses, a minister of the gospel of God's Kingdom.

The renowned Blackstone in his *Commentaries* on the common law has plainly expressed the law to be followed by this court in this matter. See Blackstone *Commentaries,* Chase 3d ed., pp. 5-7.

From its beginning this country has been recognized as a "Christian nation"; meaning that its inhabitants try to follow the lead of Christ Jesus, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each appellant is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For anyone like ap-

pellants willingly to disobey the commandments of Almighty God would result in the destruction of such disobedient one, as each appellant sincerely and conscientiously believes.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit; and they that worship him must worship him in spirit and in truth."—John 4:24.

According to Black's Law Dictionary, "worship" is the offering of honor and adoration to the Divine Being.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

Following are some of the commandments of Almighty God which every follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God." —Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

"If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from

his way, he shall die in his iniquity; but thou hast delivered thy soul."—Ezekiel 33:8, 9.

Almighty God commands His followers to proclaim publicly His commandments and judgments to the people so that all those of honest heart may hear and have opportunity to learn and to choose the way of escape from disaster and to receive life everlasting under THE THEOCRACY, the Kingdom of Almighty God, now here. God's commandments to every true follower of His Son Jesus Christ emphasize that such follower shall publicly proclaim Almighty God's written judgments and HIS condemnation of religion. Furthermore, Proverbs 1:20, 21 says:

"Wisdom crieth without; she uttereth her voice in the streets; she crieth in the chief place of concourse, in the openings of the gates: in the city she uttereth her words."

Appellants verily believe that the act of publicly counseling and informing persons that "Religion is a snare and a racket" AND to "Serve God and Christ the King" is directly and unconditionally commanded by the Almighty God in His law the Bible. We now make reference to the Scriptures above quoted. In acting thus, appellants did exactly as directed by the Lord Jesus Christ. See Mark 6:6, where it is said, "He went round about the villages, teaching." In the Bible it is recorded that Jesus said of the religionist clergy, which necessarily includes religion, that they were liars, murderers, adulterers and adulteresses and were of the Devil and that their father was Satan. See Matthew 23; John 8:44.

The statement "Religion is a snare and a racket" is a mild term when compared with the plain and burning words used by the Lord Jesus concerning religion and religionists when He was on earth.

We now refer to the Bible, of which this court takes judicial notice, and which contains the supreme law, to prove to this court that "religion is a snare and a racket". The Devil sets snares in which unsuspecting persons are caught. It is written, "The fear of man bringeth a snare; but whoso

putteth his trust in the Lord shall be safe." (Proverbs 29:25) It is also written, "Neither shalt thou serve their [religious] gods; for that will be a snare unto thee." (Deuteronomy 7:4-16) See also Judges 2:2, 3; Psalm 106:36. If religion is a snare, then the exhibiting of banners to that effect is a friendly warning to the people of good-will.

Adolf Hitler is a Catholic and a practitioner of religion, and his regime for several years has had formal agreement ("concordat") with and the support of the Roman Catholic Hierarchy institution. It is well known that Hitler constantly consults the wicked spirits, and certainly Hitler and his religion are not teaching the youth morality, integrity, or even common decency. Mussolini of Italy, Franco of Spain and Petain of France are all Roman Catholic totalitarian dictators operating with approval and control of the Roman Catholic Hierarchy of Vatican City.

Religion, as distinguished from sincere following in the footsteps of Christ Jesus, has always been the institution of persecution and crime. Jesus Christ was hanged on a tree by religionists, and His true followers today likewise are persecuted and falsely charged by religionists. Early settlers of America fled from Europe to the bleak shores of America and hewed out of the forests the embryo of this nation on account of persecution at the hand of religionists.

Religion is a racket because it is false in that it does not represent God as claimed but does represent the Devil, as stated by the Lord Jesus Christ. The leading religionists, clergy, put fear into the minds of sincere persons and thereby induce them to embrace religion. The clergy, religionists, teach to such people the doctrine of "purgatory" and many other false doctrines. They teach that the dead are in "purgatory" and many there suffer conscious punishment and torment and that by the prayers of priests, who receive money for uttering such prayers, the 'punishment of those in purgatory' can be shortened. Such is not only a false doctrine, but a wicked defamation of God's name and Word. Such doctrines make God a party to a lie by claiming that He

hears and answers the prayers of men who receive money therefor. Jehovah, the Almighty God, is never a party to granting favors upon a money consideration. This is the most subtle and wicked racket for obtaining the people's money by false representation. There are many other false doctrines taught by religionists, clergy, which injure the people. Therefore it is absolutely and Scripturally true that 'religion is a snare and a racket'.

Thus, to appellants, it is true that religion is a snare and a racket and each did exactly as commanded by Jesus, whose faithful apostle Paul said, 'Speak the truth though it make all men liars.'—Romans 3:4; Ephesians 4:15.

We submit the above as the expressed contention of appellants that it was their duty as followers of Christ Jesus to declare that "religion is a snare and a racket" and that in doing such they were exercising their right of freedom to worship Almighty God.

SUPREME

Almighty God Jehovah is supreme.

All who live must depend upon Him and obey Him. He is the "fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then "commanded that they should not speak in the name of Jesus, and let them go". Jesus' apostles positively refused to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "daily in the temple, and in every house, they ceased

not to teach and preach Jesus Christ". (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ boldly and joyfully and deliberately obeys today.

Misuse of legislative devices and misapplication of statutes to prohibit or to subjugate to human control the worship of Almighty God can be no better described than in the words expressed by the psalmist at the dictation of Almighty God to the effect that such is 'framing mischief by law'.—Psalm 94:20.

POINT TWO

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of speech and of press, in violation of the United States Constitution, Fourteenth Amendment, Section 1.

The admitted facts and undisputed evidence show that appellants on the occasion in question were engaged in an activity of "the press". Even the information on its face and the State's evidence show this fact. The act of distributing printed leaflets and carrying signs advertising a public meeting on a subject of government, and displaying a banner with the words "Religion is a snare and a racket", constitute *press activity*. It is a *way* of conveying information to others. The acts of moving about upon the streets, offering printed literature on Bible questions to the people, distributing literature to pedestrians, and simultaneously exhibiting in the sight of pedestrians signs bearing truthful informative slogans, are *press activities*.

Here is presented a question of utmost gravity and importance. It goes to the very core of the foundation of the United States Government, the Constitution. It is an unalienable right of the appellants and of every inhabitant of the United States of America to acquire information and

to impart it orally, in recorded form, and otherwise, to others. This related to an important subject and affected the rights and the eternal welfare of all persons and was a subject of interest to the appellants as well as to all other right-thinking and sober-minded persons.

The statute here in question, as applied to appellants, is not a valid exercise of the police power. By convicting appellants and holding contrariwise, the courts below have stumbled in the attempt to perform 'the delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation' (by means of said statute) of appellants' right of "freedom of the press" secured by the Fourteenth Amendment to the Federal Constitution. As construed and applied to appellants said statute and the conviction thereunder are in direct violation of said constitutional provision.

Cantwell v. Connecticut,
310 U. S. 296

Schneider v. New Jersey,
308 U. S. 147

Hague v. C. I. O. et al.,
307 U. S. 496

Lovell v. City of Griffin,
303 U. S. 444

Solely because the substance of the printed information distributed or displayed by means of banners carried by appellants is novel to some, offensive to others, or even 'shocks the religious susceptibilities' of any, is not a sufficient or substantial ground for invoking the police power to deprive appellants of this right of freedom of the press or the right of freedom of speech. None of the justifications

for denial of these rights exist in the present case. See *Near* v. *Minnesota,* 283 U. S. 697, 707.

POINT THREE

The statute as construed and applied to appellants unlawfully deprives them of their right of freedom of assembly, in violation of the Federal Constitution's Fourteenth Amendment, Section One.

The right of persons to assemble on the streets and sidewalks is an inherent right of the people. It is also their 'imprescriptible right' to use the sidewalks to disseminate information, orally or in printed or otherwise recorded form, and to call important questions to the attention of the public. In fact, this is the best place.

In recent cases involving the right to picket on the streets, this court, speaking through Mr. Justice Murphy, emphasized the points of the preceding paragraph.

Thornhill v. Alabama,
310 U. S. 88

Carlson v. California,
310 U. S. 106

In the case of *Schneider* v. *New Jersey,* supra, Mr. Justice Roberts, speaking for this court, said that the streets are the natural and proper place for dissemination of information and opinion, and that they have been used for this purpose from time immemorial, and also announced the rule that this fundamental personal right cannot be denied or abridged on the ground that the conveniences of the public will be interfered with. In that case it was held the

duty of city and state to leave the streets open for this purpose.

Furthermore, in the celebrated case of *Hague* v. *C. I. O. et al.*, supra, on the question of freedom of assembly and use of the streets this court said:

> "In the *Slaughter-House Cases* it was said, 16 Wall. 79: 'The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus,* are rights of the citizen guaranteed by the Federal Constitution.
>
> "*Second.* What has been said demonstrates that, in the light of the facts found, privileges and immunities of the individual respondents as citizens of the United States, were infringed by the petitioners, by virtue of their official positions, under color of ordinances of Jersey City, unless, as petitioners contend, the city's ownership of streets, and parks is as absolute as one's ownership of his home, with consequent power altogether to exclude citizens from the use thereof, or unless, though the city holds the streets in trust for public use, the absolute denial of their use to the respondents is a valid exercise of the police power.
>
> " . . . Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all . . .
>
> "It is enough that petitioners have prevented respondents from holding meetings and disseminating infor-

mation, whether for the organization of labor unions or *for any other lawful purpose.*" [Italics supplied]

From this it is apparent that the court below stumbled in its attempt to perform the delicate and difficult task of appraising the substantiality of the reasons advanced by the State as grounds for denying appellants their constitutional right. We emphasize the fact that this was a *march* or "mobile assembly" *for the purpose of disseminating information* on a subject of extraordinary importance and *public interest,* "Fascism or Freedom," and was not, therefore, one of the "other personal activities".

True, the nature of this "mobile assembly" *way* of communicating information is by some regarded as unusual. Appellants' use of that *way* was, nevertheless, a beneficial and lawful exercise by them of rights safeguarded for every inhabitant of the United States of America by its Constitution.

POINT FOUR

The statute in question is void on its face inasmuch as it vests in the licensing authority named therein unreasonable and unlimited arbitrary and discriminatory powers and prescribes no conditions upon which said authority may or may not grant or refuse a license, thus denying equal protection of the laws contrary to the United States Constitution, Fourteenth Amendment, Section One.

This is argued along with and under Point Five hereof, because both points are so closely interwoven that time and space can be conserved in the interest of the court and others to so present these two points. Reference is therefore made here to the argument under Point Five, infra.

POINT FIVE

The statute in question is void on its face in that it is vague and indefinite and thus denies equal protection of the laws contrary to the Federal Constitution's Fourteenth Amendment, Section 1.

The said statute, Chapter 145, Sections 2, 3, 4 and 5, of the Public Laws of the State of New Hampshire, prohibiting parades and processions without a license, appears word for word at pages 2, 3, supra.

Appellants assert that said statute violates the "due process" clause of the Fourteenth Amendment because it fails to establish an adequate standard to govern the official action of the state or municipality, and is so vague that it fails to inform those who are subject to it what conduct will render them liable to its penalties.

This assertion is based largely upon the decision of this Court in the case of *Hague* v. *C. I. O. et al.*, supra, wherein it was held that a street-meeting ordinance of New Jersey's City of Jersey City, which was invoked by municipal authorities to forbid union members from holding meetings in streets and parks, is "void upon its face". The Jersey City ordinance provided as follows:

> "THE BOARD OF COMMISSIONERS
> OF JERSEY CITY DO ORDAIN:
>
> "1. From and after the passage of this ordinance, no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety.
>
> "2. The Director of Public Safety is hereby authorized and empowered to grant permits for parades and

public assembly, upon application made to him at least three days prior to the proposed parade or public assembly.

"3. The Director of Public Safety is hereby authorized to refuse to issue said permit when, after investigation of all of the facts and circumstances pertinent to said application, he believes it to be proper to refuse the issuance thereof; provided, however, that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage.

"4. Any person or persons violating any of the provisions of this ordinance shall upon conviction before a police magistrate of the City of Jersey City be punished by a fine not exceeding two hundred dollars or imprisonment in the Hudson County jail for a period not exceeding ninety days or both."

The foregoing Jersey City ordinance this Court declared void, in the following language:

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. . . . It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."

The New Hampshire statute here drawn in question is likewise subject to the criticism that its standard is too vague. It does not declare that a permit is required for ALL street parades, processions and assemblages. The legal rights of citizens on sidewalks are certainly not quickly and easily definable. It is presumably the purpose of this statute to define a part of those rights. This argument is not intended to raise fanciful and strained objections. Testimony in this case showed that the information march was deliberately arranged with this statute in view. That is, the persons participating were instructed in advance to walk on the sidewalk in *single file,* at least *twenty feet apart.* In such array they would be ordinary pedestrians, causing no more interference with others than any orderly pedestrian. It is true that there was conflict in the testimony as to whether or not there was any interference with pedestrians, but that conflict in the testimony serves undeniably to emphasize *the issue* here involved, for it demonstrates that no standard is defined as to what constitutes interference. The result is that the officers have uncontrolled discretion in determining whether or not a given joint or common movement upon the streets of two or more persons falls within the limits of this ordinance. Under the *Hague* case such uncontrolled discretion is held to be an unconstitutional grant of power.

This court has frequently considered the constitutionality of statutes and ordinances couched in language as vague as the language of the statute here challenged. For example, a statute of Oklahoma made it criminal for contractors doing state work to pay workmen less than the "current rate of per diem wages in the locality where the work is performed". In *Connally* v. *General Construction Co.,* 269 U. S. 385, this was held to violate the due process clause of the Fourteenth Amendment.

The New Hampshire statute here involved is subject to the same criticism, for the standard established therein is likewise "composed of a multitude of gradations". A given "procession" which might interfere with pedestrians at

noon or at 6 P.M. might find a clear sidewalk at 10 A.M. or at 3 P.M. A large number of possible situations can be imagined. It is certainly not an exaggeration to say, in the language of the court, "that men of common intelligence must necessarily guess at its meaning and differ as to its application." For example, would a picket line in which two or more individuals were walking single file ten feet apart, moving up and down the sidewalk, constitute a parade or procession? Suppose the individuals in the picket line were walking two abreast, each couple ten feet from the other? Without discussing the matter any further, it would seem that such picketing should not require a permit. Is such manner or *way* of disseminating information properly and rightly restricted solely to use by persons concerned in a so-called labor dispute? Is it not rightly usable as a *way* of publication or dissemination of proper and beneficial information by any person for any lawful purpose?

The decision of this court in the case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the Board of Supervisors to grant or refuse permits for conduct of a laundry business was invalid as denying *equal protection* of the laws, within the Fourteenth Amendment to the Federal Constitution. This court quoted with approval (at pages 372 et seq.) the following from a Maryland case:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented . . . ; and when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who

gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

When considering the New Hampshire statute here challenged the important thing to be borne in mind is the fact that nowhere therein does it grant the public the right to have a *mobile assembly* or information march or procession which, we submit, is an assembly within the meaning of the Constitution. The statute says that there shall be no "parade or procession" unless by license. By terms the statute gives the licensing authority the privilege to so route and regulate a parade or 'mobile assembly' as to largely or completely nullify its effectiveness and thus amputate the right to have such.

Appellants confidently submit that the statute here drawn in question is void because of vagueness and indefiniteness, and because of conferring arbitrary and discriminatory powers. See and carefully read the following cases:

Herndon v. Lowry,
301 U. S. 242

United States v. Cohen Grocery Co.,
255 U. S. 81

Stromberg v. California,
283 U. S. 359

Lanzetta v. State,
306 U. S. 451

Cline v. Frink Dairy Co.,
274 U. S. 445

Connally v. General Constr. Co.,
269 U. S. 385

International Harvester Co. v. Kentucky,
234 U. S. 634, 638
234 U. S. 216

Smith v. Cahoun,
283 U. S. 564

Small Co. v. American Sugar Ref. Co.,
267 U. S. 233

CONCLUSION

For the reasons hereinbefore discussed the judgment of the New Hampshire Supreme Court affirming the conviction of appellants should be set aside and the appellants discharged.

Confidently submitted,

JOSEPH F. RUTHERFORD

HAYDEN COVINGTON

Attorneys for Appellants

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ET AL.,

Appellants,

vs.

STATE OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

THOMAS P. CHENEY,
Attorney General;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940

No. 502

WILLIS COX, ET AL.,

v. *Appellants,*

THE STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

APPELLEE'S STATEMENT OPPOSING JURISDICTION.

Pursuant to Rule 12, paragraph 3, Rules of the Supreme Court of the United States, comes now the State of New Hampshire, appellee, in the above entitled case and discloses the following matter making against the jurisdiction of the Supreme Court of the United States as asserted in a statement of the basis of appellate jurisdiction filed by the appellants on the fifth day of September, 1940.

Statement of the Case.

The following statement of the case is taken from the opinion of the Supreme Court of the State of New Hampshire in *State* v. *Cox*, 90 N. H. — (decided June 20, 1940), in which case the convictions of guilty in the lower court were affirmed, exceptions overruled and the statute in question held to be constitutional under the State and Federal Constitution:

> "COMPLAINTS, for taking part in a parade or procession on public streets in the City of Manchester without license therefor as required by Statute (P. L., *c.* 145, *s.*

2), the violation of which is made a misdemeanor (*Ib.*, *s.* 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an 'information march'. They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and 'as close together as it was possible for them to get without interfering with each other's walking' marched on the sidewalks of certain streets, some carrying placards or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

Manchester had a population of over 75000 in 1930, and there was testimony that on Saturday nights in an hour's time 26000 persons passed one of the intersections where the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required."

Argument.

(I) The appellee, The State of New Hampshire, submits that the appeal should be dismissed for want of a substantial Federal question.

Davis v. *Massachusetts*, 167 U. S. 43, 42 L. Ed. 71, 17 S. Ct. 731;

Wilson v. *Eureka City,* 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317;

People ex rel. Doyle v. *Atwell,* 232 N. Y. 96, 133 N. E. 364, Error Dismissed, 261 U. S. 590, 67 L. Ed. 814, 43 S. Ct. 410;

Minersville School District v. *Gobitis,* 310 U. S. —, 84 L. Ed. 993, 60 S. Ct. 1010, decided June 3, 1940.

II. The right of the State under its police power to regulate the traffic of vehicles and pedestrians, to preserve the peace and prevent disorder has never been doubted even in recent decisions of the United States Supreme Court. In *Schneider* v. *State,* 308 U. S. 147, 160, 84 L. Ed. 115, 60 S. Ct. 146, the court said:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated."

As in *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496, 515, 516, 83 L. Ed. 1423, 59 S. Ct. 954:

> "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interests of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; * * *."

It is conceded as pointed out by the court in the above cited case that it must not be abridged or denied in the guise of a police regulation. There is no evidence in the present case that such is the purpose of the statute regulating parades and the court has specifically found that it is a valid exercise of the police power and is not a guise of regulation for any other purpose.

The cases of *Carlson* v. *The People of the State of California*, 309 U. S. 106, and *Thornhill* v. *State of Alabama*, 309 U. S. 88, are to be distinguished from the instant case, inasmuch as the latter does not in any way regulate or attempt to regulate peaceful picketing nor has the Supreme Court of the State so construed it. In the *Thornhill* case the court emphasized the importance of the police power when it said "the power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents cannot be doubted".

The statute under attack in this case as construed by the Supreme Court of this State clearly shows it to be a proper exercise of the police power which does not unjustifiably restrict the rights of a citizen to his liberties and rights under the Fourteenth Amendment. It will be noted that the solicitation of the United States Supreme Court for protecting and upholding civil liberties as evidenced in the cases decided at the October term 1939 are necessarily confined to those police regulations that could be effectively accomplished without limiting these liberties. The instant case is thus distinguishable in that the police regulation cannot be effectively accomplished in any other manner.

It is, therefore, submitted that this appeal should be dismissed or the judgments below should be affirmed.

Respectfully,

THOMAS P. CHENEY,
Attorney General of the State of New Hampshire;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

September 19, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, ET AL.,

Appellants,

v.

THE STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

MOTION TO DISMISS OR AFFIRM.

Now comes The State of New Hampshire, the appellee, herein, by Thomas P. Cheney, its duly appointed, qualified and acting Attorney General, and moves the Supreme Court of the United States to dismiss with costs the appeal taken herein, to wit, by Willis Cox, et al., appellants, upon the following ground:

(1) There is want of a substantial Federal question.

(2) It is manifest that the only Federal questions raised by the said appeal have been so explicitly decided by the Supreme Court of the United States in accordance with the decision of the Supreme Court of the State of New Hampshire, as to foreclose further argument on the subject.

(3) It is clear that the decision of the Supreme Court of th State of New Hampshire, affirming the convictions of guilty, denying the appellants' exceptions and upholding the constitutionality of the New Hampshire statute is correct.

In the alternative, appellee moves this Court to affirm the judgment from which the appeal in the above entitled cause purports to be taken on the three grounds heretofore mentioned in the appellee's motion to dismiss.

THOMAS P. CHENEY,
Attorney General of the State of New Hampshire;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

September 19, 1940.

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In the Supreme Court of the United States

October Term, 1940

No. 502

WILLIS COX,
WALTER CHAPLINSKY,
JOHN KONIDES, et al.,
Appellants

vs.

THE STATE OF NEW HAMPSHIRE
Appellee

APPEAL FROM THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

APPELLEE'S BRIEF

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In the Supreme Court of the United States

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No. 502

WILLIS COX,

WALTER CHAPLINSKY, et al.,

Appellants

vs.

THE STATE OF NEW HAMPSHIRE

Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

APPELLEE'S BRIEF

OPINION BELOW

The Opinion of the New Hampshire Supreme Court is not yet officially published and reported but is unofficially reported in 16 A. (2d) 508 (R. 238-251 inc.).

JURISDICTION.

Jurisdiction of the Supreme Court of the United States has been invoked, under section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

THE STATUTE.

The statute which is drawn in question by the appellants is found in Public Laws of the State of New Hampshire, chapter 145, sections 2, 3, 4 and 5 and reads as follows:

"2. Theatricals; Parades; Meetings. No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.

"3. Licensing Board. Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and one other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

"4. Licenses; Fees. Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit, or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

"5. Penalty. If any person shall violate the provisions of the preceding sections he shall be fined not

more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter."

The New Hampshire Supreme Court held that the statute was constitutional and valid "under the federal as well as under the state constitution." (R. 251).

STATEMENT OF THE CASE.

The following statement of the case is taken from the opinon of the Supreme Court of the State of New Hampshire in *State* v. *Cox,* 90 N. H.——, 16 A. (2d) 508, (decided June 20, 1940):

"Complaints, for taking part in parade or procession on public streets in the City of Manchester without license therefor as required by Statute (P. L., c. 145, s. 2), the violation of which is made a misdemeanor (Ib., s. 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

"The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

"On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an 'information march.' They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and 'as close together

as it was possible for them to get without interfering with each other's walking' marched on the sidewalks of certain streets, some carrying placards (fol. 237) or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

"Manchester had a population of over 75000 in 1930, and there was testimony that on Saturday nights in an hour's time 26000 persons passed one of the intersections where the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

"The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required.

"Their bill of exceptions was allowed. It presents as legal issues the construction of the statute and its validity under the state and federal constitutions." (R. 238-251 inc.)

The appellants' statement (Appellants' Brief 5, 6) that neither vehicular or pedestrian traffic was blocked does not present an accurate picture of the situation. The record shows that traffic on the sidewalks and streets of the city of Manchester where the appellants held their parade, or procession, on the evening of July 8, 1939 was "heavy" (R. 9, 33, 37, 48) and "very heavy." (R. 6, 50, 55, 119). Furthermore, there was evidence that some time during the parade the appellants were in the middle of Elm Street, a public highway in the city and "when they turned, they interfered with people traveling in both directions and they had to stop and let them by." (R. 47). The evidence

clearly demonstrated that there was "interference with the travel of the public, the public walking." (R. 47). Although there may not have been any technical breach of the peace as a result of the parade, "the pedestrians stepped to one side." (R. 68).

Although the appellants contend that the marchers in the parade were fifteen to twenty feet apart, the evidence was clear that the marchers were "as close together as it was possible for them to get without interfering with each others walking." (R. 239). The weight of the evidence supported the contention of the appellee that the marchers were as close together as it was possible for them to walk. (R. 40, 42, 52, 53). The appellants state in their brief that "this dispute is not material to any of the issues in this case and will not be discussed further." (Appellants' Brief p. 6).

The appellants took the position that they were going to parade without a permit even though they knew one was required by law. (R. 51, 239).

SUMMARY OF ARGUMENT.

It is the position of the appellee that the statute in question does not deprive the appellants of their civil liberties under Section 1, Fourteenth Amendment, United States Constitution. The appellants' right of freedom to worship or the manner of exercising this right is not prohibited by the statute. To be sure, the right is subject to reasonable regulation to the end that persons other than the appellants shall have equal right to worship God in a manner consistent with public order and public safety. The statute in question does not set up any religious tests nor has it in fact been administered unfairly in any way to deprive the appellants or anyone else of the reasonable use of the high-

ways in connection with the right of pedestrians to exercise their civil liberties.

The statute does not deny the appellants their right of freedom of speech and of the press but it does prohibit any persons from engaging in a parade or procession without giving the municipal authorities advance notice in order that they may prevent and guard against disorder and congestion of traffic. Neither the appellants nor any other group have an absolute unrestricted right to parade on public highways irrespective of the rights of other pedestrians to exercise a similar right. This Honorable Court in performing "the delicate and difficult task" of protectng civil rights on the one hand and the police power of the states on the other must take into consideration the necessity for some reasonable regulation of the sidewalks and highways in order that all users of the sidewalks and highways are granted equal rights.

The statute does not prohibit or unreasonably deprive the appellants or any other group of their right of assembly. It must be remembered that the appellants' rights under the due process clause of the Fourteenth Amendment to the United States Constitution are not absolute. This Honorable Court in its most recent decisions has reaffirmed the proposition that such rights must be exercised in subordination to the general comfort and convenience. If several groups should decide to use a given highway at the same time in opposite directions and the municipal authorities had no notice of such use, it is quite evident that disorder would result, probably followed by riot, and that the public peace and safety would be seriously jeopardized. This statute is designed to obviate such an occurrence and as construed and applied does not deprive the appellants or any other group of their right to peaceably assemble in and on public ways.

The statute in question requiring a permit for a parade or procession as construed and applied by the New Hampshire Supreme Court is reasonable, cannot be used discriminately, promotes the public good and cannot be used as a guise for regulating the opinions or principles of the appellants. It is significant that in the State of New Hampshire the appellants have never been subjected to unfair treatment or discrimination and, therefore, statutes or ordinances which have been struck down in other cases for that very reason are not pertinent or controlling in the instant case.

POINTS FOR ARGUMENT

POINT ONE.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM TO WORSHIP GUARANTEED BY THE UNITED STATES CONSTITUTION.

POINT TWO.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM OF SPEECH AND OF PRESS GUARANTEED BY THE UNITED STATES CONSTITUTION.

POINT THREE.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM OF ASSEMBLY GUARANTEED BY THE UNITED STATES CONSTITUTION.

POINT FOUR.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS IS NOT UNREASONABLE, ARBITRARY OR DISCRIMINATORY AND DOES NOT DENY THE APPELLANTS EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE UNITED STATES CONSTITUTION.

POINT FIVE.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS IS NOT VAGUE AND INDEFINITE AND DOES NOT DENY THE APPELLANTS EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE UNITED STATES CONSTITUTION.

ARGUMENT.

POINT ONE.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM TO WORSHIP GUARANTEED BY THE UNITED STATES CONSTITUTION.

It is elementary that the freedom of religious worship is and always has been subject to reasonable restrictions. Thus, the practice of bigamy or polygamy, even though actuated by sincere and religious beliefs, may be prohibited without violating the constitutional guaranty of religious liberty. *Reynolds* v. *United States,* 98 U. S. 145; *Davis* v. *Beason,* 133 U. S. 333. Conduct pursued for religious purposes has been constitutionally prohibited and punished in many other instances. The refusal of one to be vaccinated

is subject to the state police power even though the refusal to submit to such a requirement is deemed violative of one's religious opinions and practices. *Jacobson* v. *Massachusetts,* 197 U. S. 11. The refusal of a person to take up arms to defend his country has been the subject of both prohibition and punishment. *United States* v. *MacIntosh,* 283 U. S. 605. The fact that a person is fired with religious zeal to parade or beat a drum has not prevented the state under its police power from regulating such activity in the interests of the public as a whole. *State* v. *White,* 64 N. H. 48. It has never been considered a defense to the crime of blasphemy that it was done pursuant to and in conformity with a supposed religious duty. *Muzzey* v. *Wilkins,* Smith (N. H.) 1.

The relative right of freedom of worship is well stated in the case of *State* v. *White,* 64 N. H. 48, 50 as follows:

> "Religious liberty, as recognized and secured by the Constitution, does not mean a license to engage in acts having a tendency to disturb the public peace under the form of religious worship, nor does it include the right to disregard those regulations which the legislature have deemed reasonably necessary for the security of public order. A reasonable measure of prevention to avoid disturbance is not an infringement of constitutional rights."

The power of the public authorities to require a flag salute in public schools may be distinguished from the facts of the instant case. However, *Minersville School District* v. *Gobitis,* 310 U. S. 586, 593 is pertinent as demonstrating the proposition that religious freedom is relative and not absolute. More specifically it demonstrates that the appellants' conception of religious duty conflicts "with the secular interests of his fellowmen." Appellee admits that the desire

to foster national unity may be of more fundamental importance than the desire to promote municipal peace and order but the difference is only one of degree. In neither case is religious freedom absolute and must of necessity be subject to regulation in the interests of public safety and public order. The New Hampshire legislature has in no way attempted to set out any religious tests by which participants in a parade shall be licensed. In New Hampshire, Jehovah's witnesses may hold such opinions as they wish and they may expound them in public without "previous restraint." cf. *Near* v. *Minnesota,* 283 U. S. 697, 713. By no stretch of the imagination can it be said that the statute is designed to regulate the appellants' religious views and it is apparent that the statute as construed and applied to the appellants is general and nondiscriminatory legislation applicable to all those who wish to use public ways.

The instant case is distinguishable from *Cantwell* v. *Connecticut,* 310 U. S. 296. In the *Cantwell* case the license was dependent on whether or not a state officer decided in his opinion that a certain cause was religious or charitable. Under the New Hampshire statute no such power is delegated to the municipal officers and it makes no difference whether the parade is for patriotic, religious, charitable or other purposes. It is submitted that the *Cantwell* case is authority for affirming the decision of the New Hampshire Supreme Court, as appears from the following quotation:

> "It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment to the

Constitution of the United States." *Cantwell* v. *Connecticut*, supra, p. 304.

To require Jehovah's witnesses to obtain a license for a parade or a procession or an "information march" is in the interests of public safety, peace, comfort, and convenience. The inconvenience to the appellants in such cases is insignificant compared with the necessity of promoting public order and preventing threats to public safety. The New Hampshire statute is not aimed at any group but as construed and applied, both in fact and in theory, is a general, reasonable and nondiscriminatory police regulation.

It is significant that the court below found nothing in the statute which could be considered a restraint on the free exercise of one's religious liberty. The Supreme Court of New Hampshire said:

> "It would seem a play of imagination to find in the statute any purpose to restrain the freedom of religion, or its exercise through speech or writing." *State* v. *Cox*, 16 A. (2d) 508, 516; (R. 250).

In other words, the court below followed the doctrine set forth in *Minersville School District* v. *Gobitis*, supra, p. 594, 595, that conscientious scruples do not excuse individuals from complying with a general law "not aimed at the promotion or restriction of religious beliefs." The power and duty of the state under its police power to enact and enforce police regulations of general application which are not directed against any sect or creed and which are a reasonable and proper means toward conserving public peace will be upheld even against the appellants. This is so although the appellants may believe that the observance of such police regulations by them is "an insult to Almighty God." See Cardozo, J., in *Hamilton* v. *Regents*, 293 U. S. 245, 268.

The statute in question as construed and applied is a fair, uniform, reasonable and nondiscriminatory regulation, constitutionally enacted and enforced in the furtherance of public order and safety. As such it is not subject to constitutional attack under any decision of this Honorable Court..

POINT TWO.

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM OF SPEECH AND OF PRESS GUARANTEED BY THE UNITED STATES CONSTITUTION.

The statute as construed and applied by the Supreme Court of New Hampshire does not conflict with the due process clause of the federal Constitution. The thought is well stated in the opinion below:

> "The language of the statute discloses no purpose to impose a 'previous restraint' upon freedom of the press or of speech as in Lovell v. Griffin; Schneider v. State; Thornhill v. Alabama and Carlson v. California, supra, nor to hamper freedom of assembly as in Hague v. Committee for Industrial Organization, supra. No censorship of comments on matters of public concern, to which reference is made in the Thornhill case, is authorized or threatened and a fortiori no censorship of religion is contemplated as in Cantwell v. Connecticut, supra." *State* v. *Cox*, 16 A. (2d) 508, 516: (R. 248, 249).

Three of the ordinances which were held invalid in *Schneider* v. *State*, 308 U. S. 147, absolutely prohibited the distribution of handbills and printed matter on the public

streets. The statute in question makes no attempt to regulate the distribution of printed matter on the public streets and even if it were construed to include such distribution, it is obvious that the statute contains no prohibition. The fourth ordinance which was held invalid in the *Schneider* case was struck down because it allowed a police officer to substitute his own judgment as to the applicant's good character and the type of literature he was to distribute. Furthermore, the ordinance required the applicant to "undergo a burdensome and inquisitorial examination, including photographing and fingerprinting." supra, pp. 163, 164.

The statute involved in this case is not burdensome, does not require photographing, fingerprinting nor is the granting of the license made dependent upon the purpose for which the parade is to be held. In other words, administrative censorship is not a vice inherent in the New Hampshire statute and thus is not subject to the same condemnation as was warranted in the *Schneider* case.

Appellants rely upon *Lovell* v. *City of Griffin*, 303 U. S. 444. That case is distinguishable on several grounds. In the first place the ordinance in the *Lovell* case prohibited the distribution of literature and no such prohibition is found in the New Hampshire statute. Secondly, the prohibition contained in the ordinance was applicable not only to distribution of literature within the streets but extended to anywhere within the city limits. Thirdly, the ordinance as construed by the court gave the licensing authority unlimited discretion, unconfined by any defined standards. In the instant case the statute as construed by the Supreme Court of the State of New Hampshire is subject to the standard of reasonableness and excludes any possibility of discrimination in its administration. That the discretion of the licensing authorities under the New Hampshire statute

was constitutionally channelized is evident from the opinion itself:

> "The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate." *State* v. *Cox*, 16 A. (2d) 508, 513; (R. 244).

It is thus apparent that the New Hampshire statute, as construed by the Supreme Court of that state, adequately protects the appellants' rights of freedom of speech and freedom of press guaranteed by the due process clause. See, *Coleman* v. *City of Griffin*, 302 U. S. 636.

The appellee readily admits the commendable and general rule that statutes absolutely prohibiting peaceful picketing are unconstitutional. 125 A. L. R. 963; 130 A. L. R. 1303. In recent cases decided by this Honorable Court peaceful picketing has been considered one of the paramount and fundamental rights which are protected by the due process clause. *Thornhill* v. *State of Alabama*, 310 U. S. 88; *Carlson* v. *State of California*, 310 U. S. 106. These cases are distinguishable from the instant case in several particulars. In the instant case the statute does not prohibit or regulate peaceful picketing in connection with a labor dispute as was the situation in the above noted cases. In both these cases, it is noted that the ordinance or statute was discriminatory and was unfairly directed against certain pickets in its enforcement. While this fact was not material to the result reached in either of these cases, it was significantly mentioned as an example of how an inexact ordinance or statute

may jeopardize the freedom of speech and of press. The New Hampshire statute as construed and applied by the court involves "no censorship of comments on matters of public concern, to which reference is made in the *Thornhill* case. . . " *State* v. *Cox*, 16 A. (2d) 508, 516; (R. 249). Freedom of speech and freedom of press under the New Hampshire statute is subject to no "previous restraint," (*Near* v. *Minnesota*, supra) and does not threaten the exercise of free speech and free press.

It is the position of the appellee that the privilege of the appellants to disseminate their ideas and ideals orally or in writing is nevertheless subject to some reasonable and uniform control. "Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *Chicago, B & Q R Co.* v. *Maguire*, 219 U. S. 549, 567. This court has been careful to point out in both the *Thornhill* case and the *Carlson* case that "the power to take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents cannot be doubted." *Thornhill* v. *Alabama*, supra, p. 105; *Carlson* v. *California*, supra, p. 113.

The most recent decisions of this Honorable Court affirm the constitutional right of peaceful picketing on the one hand (No. 56, *A. F. of L.* v. *Swing*, October Term, 1940, [U. S.] decided February 10, 1941), and reaffirm the right of the state under its police power to prohibit violence, disorder and interference with public safety on the other. No. 1, *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, October Term, 1940 (U. S.), decided February 10, 1941. In the latter case, both in the majority and minority opinions, the right of a state to promote and maintain public order and safety was specifically emphasized.

The New Hampshire statute is not attempting nor does its enforcement indicate that it has attempted to prohibit the enjoyment of civil rights under the guise of regulating parades on its highways. Peaceful picketing by appropriate means involving a few people and creating no threat to order are clearly distinguishable from the regulation of parades which, as in this case, resulted in interference with vehicular traffic and pedestrians. The New Hampshire statute is not regulating peaceful picketing. It does not prohibit the distribution or circulation of handbills. The cases cited, therefore, are not authority against its constitutionality.

It is respectfully submitted that Jehovah's witnesses are not denied freedom of speech and freedom of press because the statute in question is a reasonable police regulation which imposes no substantial burden upon the freedom of speech or the freedom of press. cf. No. 3630, *City of Manchester* v. *Leiby*, October Term 1940 (C. C. A. 1) decided February 17, 1941, in which an ordinance of the City of Manchester, New Hampshire, requiring a badge from the superintendent of schools to sell or expose for sale literature, withstood constitutional attack. The court upheld the ordinance as applied to Jehovah's witnesses, even though they contended it violated freedom of speech, freedom of press and the right to worship God according to their own dictates. The decision is important as showing that reasonable ordinances or statutes do not run counter to recent decisions of this court, where they are general, nondiscriminatory and impose no substantial burden in the exercise of one's civil liberties.

POINT THREE

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS DOES NOT DEPRIVE THEM OF THEIR RIGHT OF FREEDOM OF ASSEMBLY GUARANTEED BY THE UNITED STATES CONSTITUTION.

The court below ruled that the statute in question which required a license for parades did not "hamper freedom of assembly as in Hague v. Committee for Industrial Organization, . . Neither is there any basis in the present case for a claim of administrative discrimination against these defendants or the religious group of which they are members by the officers charged with the enforcement of the act, analogous to that which was found to exist in the Hague case, supra." *State* v. *Cox,* 16 A. (2d) 508, 516; (R. 249). At the outset it is obvious that the New Hampshire court in its authoritative construction of its own laws ruled that freedom of assembly was not hampered and that in fact and in theory the appellants had not been subjected to unfair or discriminatory treatment in the enforcement of the ordinance. It is thus apparent that the *Hague* case, upon which the appellants rely, is clearly distinguishable from this case. Furthermore, as pointed out by the Supreme Court of New Hampshire, if a parade may be regarded as an assembly in motion, the right to engage in such an assembly is "not absolute, but relative and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. *Hague* v. *C. I. O.*, 307 U. S. 496, 516. See, *State* v. *Cox,* 16 A. (2d) 508, 516; (R. 249-250).

The right to engage in a parade or participate in a public assembly has traditionally been subject to reasonable regulation. *Wilson* v. *Eureka City,* 173 U. S. 32; *People ex rel. Doyle* v. *Atwell,* 232 N. Y. 96, error dismissed 261 U. S. 590; *Davis* v. *Massachusetts,* 167 U. S. 43.

The right of states and municipalities to regulate the use of streets and public places is clearly indicated in *Schneider* v. *Irvington,* 308 U. S. 147, wherein the Court said:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets."

In the instant case the appellants paraded "in the middle of the crowded street." (R. 47). This was "contrary to traffic regulations" inasmuch as the statute in question is designed to control traffic in the streets and highways of the State. Furthermore, the action of the appellants, although it did not result in the stoppage of all traffic, did result in considerable interference with pedestrians who were forced to step aside. (R. 68). It is, therefore, the contention of the appellee that "prohibition of such conduct would not abridge the constitutional liberty . . ."

In the next to the last paragraph of *Schneider* case, the Court was careful to reserve and safeguard The State's protective power when it said: "Doubtless there are other features of such activities which may be regulated in the public interest without prior license or other invasion of constitutional liberty." The New Hampshire statute has not been construed as giving the licensing authorities "unlimited discretion in controlling free assembly." As a matter of fact, the statute is not directed against Jehovah's Witnesses who wish to exercise free speech and free assembly, but is directed against all applicants to the end that

one group or person will exercise his constitutional rights in an orderly and appropriate way by appropriate means.

As heretofore demonstrated, the *Thornhill* case and the *Carlson* case do not militate against the conclusions already advanced. Even Jehovah's Witnesses would not be allowed to picket en masse to the stoppage of traffic and without regard for the rights of other pedestrians under the doctrine of the *Thornhill* and *Carlson* cases. The necessity for requiring a license to engage in a parade or procession is forcefully demonstrated by the court below.

> "Application for a permit gives the public authorities notice in advance of any parade or procession for which license may be granted, thus giving opportunity for its proper policing. And the license, in fixing the time and place of a parade or procession, serves to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder." *State* v. *Cox*, 16 A. (2d) 508, 514; (R. 245).

It does not require extended argument to demonstrate that licenses for parades and processions are prerequisites of public order, avoidance of congestion and a proper and fair adjustment of the different kinds and types of travel of the public as a whole.

The solicitation for civil liberties evidenced in recent cases is "necessarily limited to situations where the police regulation could be effectively achieved without limiting these liberties." 53 *Harv. L. R.* 487, 488 (1940). The state respectfully submits that Jehovah's Witnesses' right to engage in a parade, procession or "information march" is necessarily subject to the restriction that all other groups or persons in Manchester are likewise entitled to the free passage of its streets and sidewalks.

It is respectfully submitted that *Davis* v. *Massachusetts*, 167 U. S. 43, although distinguished, has never been overruled and the general principle stated in that case and in the *Hague* case that the state has a right to promote public order and prevent public disorder is as true today as it was in 1897. On this record the appellants' right of assembly has not been violated or unconstitutionally invaded.

POINT FOUR

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS IS NOT UNREASONABLE, ARBITRARY OR DISCRIMINATORY AND DOES NOT DENY THE APPELLANTS EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE UNITED STATES CONSTITUTION.

Argument under this point is combined with argument under point five, infra, inasmuch as both points involve the same principles of law and can be discussed together.

POINT FIVE

THE STATUTE AS CONSTRUED AND APPLIED TO APPELLANTS IS NOT VAGUE AND INDEFINITE AND DOES NOT DENY THE APPELLANTS EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE UNITED STATES CONSTITUTION.

In considering the New Hampshire statute requiring a license for a parade, great weight must be given to the authoritative construction placed upon the act by the court of last resort in New Hampshire. The statute as construed by the Supreme Court of New Hampshire does not involve any undue delegation of legislative power, is not subject to the vice of unconfined discretion in the licensing authorities

and by "necessary inference," convenience in the use of the streets is made the standard of official action. This is forcefully and succinctly stated in the opinion of the Supreme Court of New Hampshire as follows:

> "Also, the act is implicit in its requirement that the licensing authority act reasonably in granting or denying licenses, and with reference to the object of public order on the public ways. If it does not in express terms 'make comfort or convenience in the use of the streets * * * the standard of official action' (Hague v. Committee &c. 307 (fol. 244) U. S. 496, 516), the necessary inference is that it does, based upon the presumption in favor of the validity of legislation as reenforced by the express provision of the act bestowing 'delegated powers' upon the authority, as a grant intended to be only of due legislative power which may properly be delegated. The discretion thus vested in the authority is limited in its exercise by the bounds of reason, in uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations, and from unfair discrimination. A systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate. The licensing authority has no delegation of power in excess of that which the legislature granting the power has, and the legislature attempted to delegate no power it did not possess." *State* v. *Cox*, 16 A. (2d) 508, 513. (R. 244).

The appellants rely on *Hague* v. *C. I. O.*, supra, as authority for striking down the statute in question as void on its face. In view of the construction placed upon it by the

court below, it logically follows that an adequate standard is set up under the statute as judicially construed. The *Hague* case is, therefore, distinguishable from the instant case.

Although perhaps not material, it is significant that the constant and continual abuse of civil liberties in the *Hague* case has no counterpart in New Hampshire. Administrative unfairness in the enforcement of the statute is not a complaint that the appellants or anyone else can make in this case. The act upon its face and as judicially construed does not control or suppress publication of ideas orally or in writing. Communication by the distribution of leaflets is in no way regulated by the statute. The New Hampshire law regulates parades and processions on the highways. It is not a regulation or an attempted regulation of speech, press or assembly. *State* v. *Cox,* 16 A. (2d) 508, 514; (R. 246).

It is submited that the New Hampshire statute guarantees to the appellants equal protection of the laws and prescribes no arbitrary or discriminatory conditions upon which a license from the municipal authorities shall issue. As such it is a valid exercise of the state's police power in the interests of public order and public safety. No. 3630 *City of Manchester* v. *Leiby,* October Term, 1940 (C. C. A. 1) decided February 17, 1941. See also, the recent decision of this Honorable Court in No. 716 *Hussock* v. *People of New York,* October Term, 1940, decided March 3, 1941.

CONCLUSION.

For the reasons hereinbefore discussed the judgment of the New Hampshire Supreme Court affirming the conviction of the appellants should be affirmed and the appeal dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 502.—October Term, 1940

Willis Cox, Walter Chaplinsky, John Konides, et al., Appellants, *vs.* State of New Hampshire. } Appeal from the Supreme Court of the State of New Hampshire.

[March 31, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellants are five "Jehovah's Witnesses" who, with sixty-three others of the same persuasion, were convicted in the municipal court of Manchester, New Hampshire, for violation of a state statute prohibiting a "parade or procession" upon a public street without a special license.

Upon appeal, there was a trial *de novo* of these appellants before a jury in the Superior Court, the other defendants having agreed to abide by the final decision in that proceeding. Appellants were found guilty and the judgment of conviction was affirmed by the Supreme Court of the State. *State* v. *Cox*, 90 N. H. —.

By motions and exceptions, appellants raised the questions that the statute was invalid under the Fourteenth Amendment of the Constitution of the United States in that it deprived appellants of their rights of freedom of worship, freedom of speech and press, and freedom of assembly, vested unreasonable and unlimited arbitrary and discriminatory powers in the licensing authority, and was vague and indefinite. These contentions were overruled and the case comes here on appeal.

The statutory prohibition is as follows (New Hampshire, P. L., Chap. 145, Sec. 2):

"No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall

first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for".

The provisions for licensing are set forth in the margin.[1]

The facts, which are conceded by the appellants to be established by the evidence, are these: The sixty-eight defendants and twenty other persons met at a hall in the City of Manchester on the evening of Saturday, July 8, 1939, "for the purpose of engaging in an information march". The company was divided into four or five groups, each with about fifteen to twenty persons. Each group then proceeded to a different part of the business district of the city and there "would line up in single-file formation and then proceed to march along the sidewalk, 'single-file', that is, following one another". Each of the defendants carried a small staff with a sign reading "Religion is a Snare and a Racket" and on the reverse "Serve God and Christ the King". Some of the marchers carried placards bearing the statement "Fascism or Freedom. Hear Judge Rutherford and Face the Facts". The marchers also handed out printed leaflets announcing a meeting to be held at a later time in the hall from which they had started, where a talk on government would be given to the public free of charge. Defendants did not apply for a permit and none was issued.

There was a dispute in the evidence as to the distance between the marchers. Defendants said that they were from fifteen to twenty feet apart. The State insists that the evidence clearly showed that the "marchers were as close together as it was possible for them to

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[1] New Hampshire, P. L., Chap. 145, Sections 3, 4 and 5 are as follows:

"Section 3: Licensing Board. Any city may create a licensing board to consist of the person who is the active head of the police department, the mayor of such city and one other person who shall be appointed by the city government, which board shall have delegated powers to investigate and decide the question of granting licenses under this chapter, and it may grant revocable blanket licenses to fraternal and other like organizations, to theatres and to undertakers.

"Section 4: Licenses: Fees. Every such special license shall be in writing, and shall specify the day and hour of the permit to perform or exhibit or of such parade, procession or open-air public meeting. Every licensee shall pay in advance for such license, for the use of the city or town, a sum not more than three hundred dollars for each day such licensee shall perform or exhibit, or such parade, procession or open-air public meeting shall take place; but the fee for a license to exhibit in any hall shall not exceed fifty dollars.

"Section 5: Penalty. If any person shall violate the provisions of the preceding sections he shall be fined not more than five hundred dollars; and it shall be the duty of the selectmen to prosecute for every violation of this chapter".

walk". Appellants concede that this dispute is not material to the questions presented. The recital of facts which prefaced the opinion of the state court thus summarizes the effect of the march: "Manchester had a population of over 75,000 in 1930, and there was testimony that on Saturday nights in an hour's time 26,000 persons passed one of the intersections where the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred. The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required".

Appellants urge that each of the defendants was a minister ordained to preach the gospel in accordance with his belief and that the participation of these ministers in the march was for the purpose of disseminating information in the public interest and was one of their ways of worship.

The sole charge against appellants was that they were "taking part in a parade or procession" on public streets without a permit as the statute required. They were not prosecuted for distributing leaflets, or for conveying information by placards or otherwise, or for issuing invitations to a public meeting, or for holding a public meeting, or for maintaining or expressing religious beliefs. Their right to do any one of these things apart from engaging in a "parade or procession" upon a public street is not here involved and the question of the validity of a statute addressed to any other sort of conduct than that complained of is not before us.

There appears to be no ground for challenging the ruling of the state court that appellants were in fact engaged in a parade or procession upon the public streets. As the state court observed: "It was a march in formation, and its advertising and informatory purpose did not make it otherwise. . . . It is immaterial that its tactics were few and simple. It is enough that it proceeded in an ordered and close file as a collective body of persons on the city streets".

Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as incon-

sistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places. *Lovell* v. *Griffin,* 303 U. S. 444, 451; *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496, 515, 516; *Schneider* v. *State,* 308 U. S. 147, 160; *Cantwell* v. *Connecticut,* 310 U. S. 296, 306, 307.

In the instant case, we are aided by the opinion of the Supreme Court of the State which construed the statute and defined the limitations of the authority conferred for the granting of licenses for parades and processions. The court observed that if the clause of the Act requiring a license "for all open-air public meetings upon land contiguous to a highway" was invalid, that invalidity did not nullify the Act in its application to the other situations described. Recognizing the importance of the civil liberties invoked by appellants, the court thought it significant that the statute prescribed "no measures for controlling or suppressing the publication on the highways of facts and opinions either by speech or by writing"; that communication "by the distribution of literature or by the display of placards and signs" was in no respect regulated by the statute; that the regulation with respect to parades and processions was applicable only "to organized formations of persons using the highways"; and that "the defendants, separately, or collectively in groups not constituting a parade or procession", were "under no contemplation of the Act". In this light, the court thought that interference with liberty of speech

and writing seemed slight; that the distribution of pamphlets and folders by the groups "traveling in unorganized fashion" would have had as large a circulation, and that "signs carried by members of the groups not in marching formation would have been as conspicuous, as published by them while in parade or procession".

It was with this view of the limited objective of the statute that the state court considered and defined the duty of the licensing authority and the rights of the appellants to a license for their parade, with regard only to considerations of time, place and manner so as to conserve the public convenience The obvious advantage of requiring application for a permit was noted as giving the public authorities notice in advance so as to afford opportunity for proper policing. And the court further observed that, in fixing time and place, the license served "to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder". But the court held that the licensing board was not vested with arbitrary power or an unfettered discretion; that its discretion must be exercised with "uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination"; that a "systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways, is the statutory mandate". The defendants, said the court, "had a right, under the Act, to a license to march when, where and as they did, if after a required investigation it was found that the convenience of the public in the use of the streets would not thereby be unduly disturbed, upon such condition or changes in time, place and manner as would avoid disturbance".

If a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right.

There remains the question of license fees which, as the court said, had a permissible range from $300 to a nominal amount. The court construed the Act as requiring "a reasonable fixing of the

amount of the fee". "The charge", said the court, "for a circus parade or a celebration procession of length, each drawing crowds of observers, would take into account the greater public expense of policing the spectacle, compared with the slight expense of a less expansive and attractive parade or procession, to which the charge would be adjusted". The fee was held to be "not a revenue tax, but one to meet the expense incident to the administration of the Act and to the maintenance of public order in the matter licensed". There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated. The suggestion that a flat fee should have been charged fails to take account of the difficulty of framing a fair schedule to meet all circumstances, and we perceive no constitutional ground for denying to local governments that flexibility of adjustment of fees which in the light of varying conditions would tend to conserve rather than impair the liberty sought.

There is no evidence that the statute has been administered otherwise than in the fair and non-discriminatory manner which the state court has construed it to require.

The decisions upon which appellants rely are not applicable. In *Lovell* v. *Griffin, supra,* the ordinance prohibited the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager, thus striking at the very foundation of the freedom of the press by subjecting it to license and censorship. In *Hague* v. *Committee for Industrial Organization, supra,* the ordinance dealt with the exercise of the right of assembly for the purpose of communicating views; it did not make comfort or convenience in the use of streets the standard of official action but enabled the local official absolutely to refuse a permit on his mere opinion that such refusal would prevent "riots, disturbances or disorderly assemblage". The ordinance thus created, as the record disclosed, an instrument of arbitrary suppression of opinions on public questions. The court said that "uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right". In *Schneider* v. *State, supra* (p. 163) the ordinance was directed at canvassing and banned unlicensed communication of any views, or the advocacy of any cause, from door to door, subject only the power of a police officer to determine as a censor what literature might be distributed and who might dis-

tribute it. In *Cantwell* v. *Connecticut, supra* (p. 305) the statute dealt with the solicitation of funds for religious causes and authorized an official to determine whether the cause was a religious one and to refuse a permit if he determined it was not, thus establishing a censorship of religion.

Nor is any question of peaceful picketing here involved, as in *Thornhill* v. *Alabama,* 310 U. S. 88, and *Carlson* v. *California,* 310 U. S. 106. The statute, as the state court said, is not aimed at any restraint of freedom of speech, and there is no basis for an assumption that it would be applied so as to prevent peaceful picketing as described in the cases cited.

The argument as to freedom of worship is also beside the point. No interference with religious worship or the practice of religion in any proper sense is shown, but only the exercise of local control over the use of streets for parades and processions.

The judgment of the Supreme Court of New Hampshire is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END